

# The Gazette of India



PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, APRIL 19, 1947

Separate paging is given to this Part in order that it may be filed as a separate compilation

## PART V

**Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.**

### GOVERNMENT OF INDIA

#### LEGISLATIVE ASSEMBLY DEPARTMENT

The following Report of the Select Committee on the Bill to provide for an investigation into matters relating to taxation on income, was presented to the Legislative Assembly on the 7th April, 1947:—

We, the undersigned, members of the Select Committee to which the Bill to provide for an investigation into matters relating to taxation on income was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

*Clauses 3 and 5.*—We propose the replacement of clause 3 of the Bill as introduced by these two clauses. Sub-clause (a) of the new clause 3 reproduces without material modification sub-clause (1) of the previous clause 3. We have however recast considerably in our clause 5 the provisions of sub-clauses (2) and (3) of the original Bill. Under those provisions investigation into the cases of particular cases could be initiated either by the Commission itself or on a direction from Government: power was also given to the Commission to investigate the cases of persons whose affairs it found to be connected with those of the person under investigation. We consider that this aspect of the Commission's work should in the first instance be confined to cases referred to it by Government before the end of the current year, in which Government has *prima facie* reasons for believing that substantial evasion has taken place. Should the Commission in the course of an inquiry have reason to believe that other persons have been evading taxation, it is empowered under sub-clause (2) of our new clause 5 to report the matter to Government, and if Government considers that an investigation should be made into any case so reported, it may at any time direct the Commission to make the investigation.

*Clause 4.*—We consider that the Chairman should be a person who is or has been a High Court Judge, and we amend the clause accordingly.

*Clause 6.*—Sub-clauses (1) and (3) reproduce with only formal change clause 5, and sub-clause (5) of clause 7, of the original Bill. Our sub-clause (2) replaces clause 6 of the Bill as introduced. While we recognise that it would be impracticable for the Commission itself invariably to make the detailed examination of accounts and other documents which may be necessary to ascertain the true facts, we consider that the wide powers which could have been conferred on officers of the Commission under the original clause 6 to be much too drastic and capable of being abused. Under our revised provision, when an investigation by the Commission is proceeding, competent persons may be deputed by the Commission to examine accounts or other documents and to interrogate for the purpose of such examination persons having charge of them. Having made such examination, the person deputed will report to the Commission.

*Clause 7.*—Sub-clause (1) reproduces the corresponding sub-clause of the original Bill, omitting the power of the Commission to decide whether there may be representation by pleader: we think that this right should be allowed to all persons whose cases are being investigated, and in our sub-clause (3) we so provide. While we accept the second part of the original sub-clause (2) and include it as sub-clause (5) of our draft, we consider the first part of this sub-clause as originally drawn to be unfair to the persons concerned, and this we replace in our sub-clause (2). And as we expressly refer to the Indian Evidence Act in this sub-clause, the substantive part of the original sub-clause (3) becomes unnecessary in view of section 132 of that Act. As a means of protecting witnesses, we prefer to the provision set out in the provisos to the original sub-clause (3) which enabled the Commission to grant certificates of indemnity, the provision which we set out in sub-clause (4) requiring the sanction of Government for the use against witnesses in the Courts of evidence given by them before the Commission. Our sub-clause (6) reproduces the original sub-clause (4) with only formal modification.

*Clause 8.*—We propose limiting the reopening of assessment proceedings to periods subsequent to the year 1938, and insert a sub-clause requiring a copy of the Commission's report so far as it relates to him to be given to the person in respect of whom assessment proceedings are directed to be taken under this clause.

*Clause 9.*—Our changes are formal.

2. The Bill was published in Part V of the *Gazette of India*, dated the 8th March, 1947.

3. We think that the Bill has not been so altered as to require republication, and we recommend that it may be passed as now amended.

JOGENDRA NATH MANDAL.  
LIAQUAT ALI KHAN.

\*P. J. GRIFFITHS.  
MOHAMMAD YAMIN KHAN.  
K. NAZIMUDDIN.  
MUHAMMAD NAUMAN.  
N. V. GADGIL.  
MANU SUBEDAR.  
MOHAN LAL SAKSENA.  
SATYA NARAYAN SINHA.  
LAKSHMI KANTA MAITRA.  
N. M. JOSHI.  
SHAVAX A. LAL.  
JOHN SHEEHY.  
C. W. AYERS.

NEW DELHI ;  
the 7th April, 1947.

#### MINUTE OF DISSENT

I disagree entirely with the changes made in Select Committee, inasmuch as they seriously diminish the power of the Commission to deal with particular cases of evasion.

In particular I regret that the Commission has now no power to act on its own initiative and that even the Central Government cannot refer a case to the Commission without *prima facie* evidence that evasion has taken place.

As the Bill is now framed, I doubt if the Commission will catch any of the really big offenders.

P. J. GRIFFITHS.

NEW DELHI ;  
The 7th April, 1947.

## L. A. BILL No. 30 OF 1947

( BILL AS AMENDED BY THE SELECT COMMITTEE.)

(Words underlined or sidelined indicate the amendments suggested by the Committee; asterisks indicate omissions)

**A Bill to provide for an investigation into matters relating to taxation on income**

WHEREAS it is expedient, for the purpose of ascertaining whether the actual incidence of taxation on income is and has been in recent years in accordance with the provisions of law, and the extent to which the existing law and procedure for the assessment and recovery of such taxation is adequate to prevent the evasion thereof, to make provision for an investigation to be made into such matters;

It is hereby enacted as follows :—

1. (1) This Act may be called the Taxation on Income (Investigation Commission) Act, 1947. Short title, extent and commencement.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. In this Act, "taxation on income" means any tax chargeable under the Indian Income-tax Act, 1922 (XI of 1922) or the Excess Profits Tax Act, 1940 (XV of 1940). Interpretation.

3. \*The Central Government may constitute a Commission to be called the Income-tax Investigation Commission (hereinafter referred to as the Commission) whose duties it shall be— Constitution and functions of Commission.

(a) to investigate and report to the Central Government on all matters relating to taxation on income, with particular reference to the extent to which the existing law relating to, and procedure for, the assessment and collection of such taxation is adequate to prevent the evasion thereof;

(b) to investigate in accordance with the provisions of this Act any case referred to it under section 5 and report thereon to the Central Government.

4. (1) The Commission shall consist of a Chairman (being a person who is or has been \* \* \* a Judge of a High Court) and two other Commissioners, appointed by the Central Government. Composition of Commission.

(2) On the occurrence from any cause of a vacancy among the Commissioners, the Central Government may, if it thinks fit, appoint a person to fill the vacancy.

5. (1) The Central Government may, at any time before the 31st day of December 1947, refer to the Commission for investigation and report any case in which the Central Government has Powers of Central Government to refer cases for investigation.

*prima facie* reasons for believing that a person has to a substantial extent evaded payment of taxation on income, together with such material as may be available in support of such belief.

(2) If in the course of investigation into a case referred to it under sub-section (1), the Commission has reason to believe that some person other than the person whose case is being investigated has himself evaded payment of taxation on income, it may make a report to the Central Government stating its reasons for such belief, and on receipt of such report the Central Government may at any time refer the case of such other person to the Commission for investigation and report.

**Powers of Commission.**

6. (1) The Commission shall have power to administer oaths, and shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purposes of taking evidence on oath, enforcing the attendance of witnesses and of persons whose cases are being investigated, compelling the production of documents and issuing commissions for the examination of witnesses, and shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898); and any reference in the said Chapter to the presiding officer of a Court shall be deemed to include a reference to the Chairman of the Commission.

(2) If in the course of any investigation under this Act it appears to the Commission to be necessary to examine any accounts or documents which it cannot itself conveniently examine, the Commission may authorise any person qualified in its opinion to make such examination to examine the accounts or documents and interrogate for that purpose any person having charge or custody thereof and make a report thereon to the Commission; and any person having charge or custody of such accounts or documents shall be bound to produce them to the person so authorised and to give to such person any information in respect thereof which the person so authorised may require.

(3) The Commissioners and all persons authorised by the Commission under this section shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

**Procedure of Commission.**

7. (1) The Commission shall, subject to the provisions of this Act, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private) and may act notwithstanding a vacancy in the number of the Commissioners.

(2) In making an investigation under clause (b) of section 3 the Commission shall act in accordance with the principles of natural justice, shall follow as far as practicable the principles of the Indian Evidence Act, 1872 (I of 1872), and shall give the person whose case is being investigated a reasonable opportunity of rebutting any evidence adduced against him.

(3) Any person whose case is being investigated by the Commission may be represented by a pleader duly authorised to act on his behalf.

(4) Except with the previous sanction of the Central Government,—

(a) no suit, prosecution or other legal proceeding shall be instituted against any person in any civil or criminal court for any evidence given by him in any proceedings before the Commission, and

(b) no evidence so given shall be admissible in evidence against such person in any suit, prosecution or other proceeding before such Court.

(5) \*\*\*No document shall be inadmissible in evidence in any proceedings before the Commission on the ground that it is not duly stamped or registered.

(6) Nothing in section 54 of the Indian Income-tax Act, 1922 (XI of 1922) or in that section as applied to excess profits tax by section 21 of the Excess Profits Tax Act, 1940 (XV of 1940) shall apply to the disclosure of any of the particulars referred to therein in any proceeding before the Commission or in any report made by the Commission to the Central Government or in any report made to the Commission by a person authorised under sub-section (2) of section 6.

8. (1) After considering any report made to it under clause (b) of section 3, the Central Government may, by order in writing, direct that proceedings to assess in respect of the income of any period commencing after the 31st day of December 1938 the person to whose case the report relates to income-tax, super-tax or excess profits tax shall be taken or reopened; and upon such a direction being made, such assessment proceedings may be taken and completed under the appropriate law, notwithstanding anything contained in section 34 of the Indian Income-tax Act, 1922 (XI of 1922), or section 15 of the Excess Profits Tax Act, 1940 (XV of 1940), or any other law, and notwithstanding any lapse of time.

Power to direct reopening of assessment proceedings.

(2) On a direction being made under sub-section (1), a copy of the report of the Commission, so far as it relates to the case of the person concerned, shall be furnished to him.

(3) Notwithstanding anything to the contrary contained in any other law, in any proceedings directed to be taken under sub-section (1), any evidence in the case adduced before the Commission or a person authorised by it under sub-section (2) of section 6 shall be admissible in evidence.

9. No act or proceeding of the Commission or any person authorised by it under sub-section (2) of section 6 shall be called in question in any manner by any Court, and no suit, prosecution or other legal proceeding shall lie against the Crown or any Commissioner or any other person for anything in good faith done or intended to be done under this Act.

Bar of Jurisdiction

10. The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

Power to make Rules.

The following Bill was introduced in the Legislative Assembly on the 11th April, 1947:—

L. A. BILL No. 42 OF 1947

*A Bill to amend and codify certain branches of the Hindu Law*

WHEREAS it is expedient to amend and codify certain branches of the Hindu Law as now in force in British India;

It is hereby enacted as follows:—

PART I.—PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the *Hindu Code*.

(2) It extends to the whole of British India.

(3) It shall come into force on the first day of January 1948.

2. **Application of Code.**—(1) This Code applies to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, including Virashaivas or Lingayats and members of the Brahmo, the Prarthana, or the Arya Samaj.

(2) It also applies to persons professing the Buddhist, Jaina or Sikh religion.

(3) (a) It shall be presumed, until the contrary is proved, that the whole of this Code applies to any person who is not a Muslim, Christian, Parsi or Jew by religion.

(b) Where it is proved that any such person, not being a Hindu, Buddhist, Jaina or Sikh by religion, is not governed by the Hindu Law or by any custom or usage as part of that Law in respect of all or any of the matters dealt with herein, this Code shall not apply to that person in respect of those matters.

(4) All references to the expression 'Hindu' in any portion of this Code shall be construed as if they included references to a person who is not a Hindu by religion but to whom such portion applies by virtue of the provisions in sub-sections (2) and (3).

*Illustrations*

(a) A convert to the Hindu religion is governed by this Code.

(b) A member of a Scheduled Caste is governed by this Code.

(c) A member of a hill tribe who is not a Muslim, Christian, Parsi or Jew by religion will be governed by this Code, if nothing is proved to the contrary.

(d) This Code applies to a child, legitimate or illegitimate, both of whose parents are governed by it. If only one of the parents is so governed, this Code would apply to the child if he or she is brought up as a member of the community, group or family to which such parent belongs or belonged.

(e) This Code applies to a Hindu, Buddhist, Jaina or Sikh, who has merely deviated from the orthodox practices of his religion or expressed disbelief in any of the tenets thereof, but has not embraced the Muslim, Christian, Zoroastrian or Jewish religion.

3. **Operation of Code in relation to previous customs and usages.**—In regard to any of the matters dealt with in this Code, its provisions shall supersede any custom or usage not hereby expressly saved.

4. **"Custom" and "Usage" defined.**—In this Code, the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among the Hindus in any local area, community, group, or family:

Provided that the rule is certain and not unreasonable or opposed to public policy:

Provided further that in the case of a rule applicable only to a family, it has not been discontinued by the family.

**5. Other definitions.**—In this Code, unless there is anything repugnant in the subject or context—

(a) “agnate”—one person is said to be an agnate (*gotraja*) of another, if the two are related by blood or adoption wholly through males ;

(b) “caste” means one of the four primary *varnas* or castes recognized by Hindu Law before the commencement of this Code, and does not refer to any sub-caste ;

(c) “cognate”—one person is said to be a cognate (*bandhu*) of another, if the two are related by blood or adoption but not wholly through males ;

(d) “District Court” means the principal Civil Court of original jurisdiction and includes the High Court in the exercise of its ordinary original civil jurisdiction ;

(e) “full blood” and “half blood”—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives ;

“uterine blood”—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands ;

*Explanation :* In this clause, “ancestor” includes the father and “ancestress” the mother ;

(f) “gotra” and “pravara” have the same meanings as in the Hindu Law before the commencement of this Code ;

(g) “intestate”—a person is deemed to die intestate in respect of all property of which he or she has not made a testamentary disposition capable of taking effect ;

(h) “Part” means any Part of this Code ;

(i) “related” means related by legitimate kinship, provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another ; and any word expressing relationship or denoting a relative shall be construed accordingly ;

(j) “stridhana” means the property of a woman, howsoever acquired, whether by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at, or after her marriage, or by her own skill or exertions, or by purchase, or by prescription, or by any other mode.

**6. Amendment of Act III of 1872.**—The Special Marriage Act, 1872 (III of 1872) is hereby amended to the extent specified in the fourth column of the First Schedule.

**7. Repeals.**—The enactments specified in the Second Schedule are hereby repealed to the extent specified in the fourth column thereof.

## PART II.—INTESTATE SUCCESSION

### INTRODUCTORY

**1. Part not to apply in certain cases.**—This Part shall not apply—

(i) to agricultural land, or

(ii) to any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment, or

(iii) to any property of a Hindu governed by the *Marumakkattayam*, *Aliyasantana* or *Nambudri* law of inheritance.

**2. Definitions and Interpretation.**—(1) In this Part, unless there is anything repugnant in the subject or context—

(a) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Part;

(b) "heritable property" means all property or interest in property, which belongs to an intestate in his or her own right and passes by inheritance;

(c) "son" includes a *dattaka*, *kritrima* or *godha* son and also a *dugamushyazana*, or an *illatom* son adopted before the commencement of this Code, but not a *dasiputra*; the expressions "*dattika* son", "*kritrima* son", "*godha* son", "*dugamushyazana* son", and "*dasiputra*" have the same meanings as in the Hindu Law before the commencement of this Code and the expression "*illatom* son" has the same meaning as in customary law before such commencement.

(2) In this Part, unless there is anything repugnant in the subject or context, words importing the masculine gender shall not be taken to include females.

(3) For the purposes of this Part—

(a) the domicile of a Hindu shall be determined in accordance with the provisions contained in sections 6 to 18, both inclusive, of the Indian Succession Act, 1925 (XXXIX of 1925);

(b) when an adoption takes place—

(i) in the case of a *dattaka* son, the natural tie is severed and replaced by the tie created by the adoption,

(ii) in the case of a *dugamushyazana* son, the natural tie continues side by side with the tie created by the adoption,

(iii) in the case of a *kritrima* or *godha* or an *illatom* son, the natural tie continues while the tie created by the adoption is limited to the person adopted and the person adopting him.

#### Illustration

A adopts C, son of B. C has a son, D. Then, for the purposes of inheritance, the following consequences will ensue, depending upon whether C was adopted as a *dattaka*, a *dugamushyazana*, a *kritrima* or *godha*, or an *illatom* son of A.

If C is adopted as a *dattaka* son, he becomes the son of A and ceases to be the son of B. He ceases to be the grandson of B's father and the nephew of B's brother and becomes the grandson of A's father and the nephew of A's brother. Likewise, D becomes the grandson of A but not of B.

If C is adopted as a *dugamushyazana* son, he becomes the son of A, but continues to be the son of B as well. He also becomes the grandson of A's father and the nephew of A's brother, but continues as well to be the grandson of B's father and the nephew of B's brother. Likewise, D becomes the grandson of A and of B as well.

If C is adopted as a *kritrima* or *godha* or an *illatom* son, he becomes the son of A while continuing to be the son of B as well. He does not, however, become the grandson of A's father or the nephew of A's brother, but remains the grandson of B's father and the nephew of B's brother. Likewise, D becomes the grandson of B but not of A.

**3. Application of Part.**—Save as provided in section 1, this Part regulates the succession to the heritable property of a Hindu dying intestate after the commencement of this Code in the following cases, namely:—

(a) Where the property is movable property, unless it is proved that the intestate was not domiciled in British India at the time of his or her death.

(b) Where the property is immovable property situated in British India whether the intestate was domiciled in British India at the time of his or her death or not:

Provided that upon the death of any woman who, at the commencement of this Code, had the limited estate known as the Hindu woman's estate in any property, such property shall devolve on the persons who, under this Part, would have been the heirs of the last full owner thereof, if such owner had died intestate immediately after her.



## SUCCESSION TO THE PROPERTY OF MALES

4. Devolution of heritable property of males.—The heritable property of a male intestate shall devolve according to the rules laid down in this Part—

- (a) upon the enumerated heirs referred to in section 5, if any ;
- (b) if there is no enumerated heir, upon his agnates, if any ;
- (c) if there is no agnate, upon his cognates, if any ;
- (d) if there is no cognate, upon the heirs referred to in section 10, if any.

5. Enumerated heirs.—(1) The following relatives of an intestate are his enumerated heirs :—

*Class I—Heirs in the compact series—*

(1) Son, widow, daughter ; son and widow of a predeceased son ; son and widow of a predeceased son of a predeceased son.

- (2) Daughter's son.
- (3) Mother.
- (4) Father.
- (5) Brother.
- (6) Brother's son.

*Class II—Other descendants—*

- (1) Son's daughter.
- (2) Daughter's daughter.
- (3) Son's daughter's son.
- (4) Son's son's daughter.
- (5) Son's daughter's daughter.
- (6) Daughter's son's son.
- (7) Daughter's son's daughter.
- (8) Daughter's daughter's son.
- (9) Daughter's daughter's daughter.

*Class III—Other descendants of Father—*

- (1) Brother's son's son.
- (2) Sister.
- (3) Sister's son.
- (4) Brother's daughter.
- (5) Sister's daughter.

*Class IV—Father's mother, father's father and his descendants*

- (1) Father's mother.
- (2) Father's father.
- (3) Father's brother.
- (4) Father's brother's son.
- (5) Father's brother's son's son.
- (6) Father's sister.
- (7) Father's sister's son.
- (8) Father's brother's daughter.
- (9) Father's sister's daughter.

*Class V — Father's father's mother, father's father's father and his descendants—*

- (1) Father's father's mother.
- (2) Father's father's father.
- (3) Father's father's brother.
- (4) Father's father's brother's son.
- (5) Father's father's brother's son's son.
- (6) Father's father's sister.
- (7) Father's father's sister's son.
- (8) Father's father's brother's daughter.
- (9) Father's father's sister's daughter.

*Class VI — Mother's mother, mother's father and his descendants—*

- (1) Mother's mother.
- (2) Mother's father.
- (3) Mother's brother.
- (4) Mother's brother's son.
- (5) Mother's brother's son's son.
- (6) Mother's sister.
- (7) Mother's sister's son.
- (8) Mother's brother's daughter.
- (9) Mother's sister's daughter.

(2) In the Province of Bombay, sub-section (1) shall have effect as if—

(i) in Class IV, between the father's mother and the father's father, the following heirs had been inserted, namely :—

- “(1A) Father's widow.  
 (1B) Brother's widow.  
 (1C) Brother's son's widow.  
 (1D) Brother's son's son's widow ”;

(ii) in Class V between the father's father's mother and the father's father's father, the following heirs had been inserted, namely :—

- “(1A) Father's father's widow.  
 (1B) Father's brother's widow.  
 (1C) Father's brother's son's widow.  
 (1D) Father's brother's son's son's widow ”; and

(iii) after Class V, the following Class had been inserted, namely :—

“Class VA—Widows of certain *gotraja sapindas*—

- (1) Father's father's father's widow.
- (2) Father's father's brother's widow.
- (3) Father's father's brother's son's widow.
- (4) Father's father's brother's son's son's widow.”

(3) In sub-sections (1) and (2), references to a “brother” or “sister” do not include references to a brother or sister by uterine blood.

**6. Order of succession among enumerated heirs.**—Among the enumerated heirs, those in one Class shall be preferred to those in any succeeding Class; and within each class, those included in one entry shall be preferred to those included in any succeeding entry, while those included in the same entry shall take together.

#### *Illustrations*

(i) The surviving relatives of an intestate are his widow, his sister and his father's father. The widow who is included in Class I is preferred to the sister who is in Class III and the father's father who is in Class IV.

(ii) The surviving relatives are three sons, two grandsons by a pre-deceased son, and the widow of another predeceased son. All of them being enumerated heirs included in entry (1) of Class I succeed simultaneously, no one excluding the others.

(iii) The surviving relatives are a widow, two sons, three daughters, two grand-sons by a pre-deceased son and a great-grand-daughter by another pre-deceased son's pre-deceased son. All of them, except the last, being enumerated heirs included in entry (1) of Class I, succeed simultaneously. The great-grand-daughter who is in entry (4) of Class II does not take anything.

(iv) In the Province of Bombay, the father's widow (step-mother) who is in Class IV is preferred to the mother's mother who is in Class VI.

**7. Manner of distribution among enumerated heirs in entry (1) of Class I.**—The distribution of an intestate's property among the enumerated heirs in entry (1) of Class I above shall take place according to the following rules, namely:—

**Rule 1.**—The intestate's widow, or if there is more than one widow, all the widows together, shall take one share.

**Rule 2.**—Each surviving son of the intestate shall take one share, whether he was undivided or divided from the intestate or re-united with him.

**Rule 3.**—(1) The heirs in the branch of each predeceased son of the intestate shall take between them one share if there is a son or son's son of such pre-deceased son, and half a share in other cases.

(2) The distribution of the share or half-share aforesaid among the heirs in the branch of a predeceased son shall be made so that his widow (or widows together) and each of his surviving sons get equal portions and the branch of each of his predeceased sons gets the same portion if it contains a son of such predeceased son and one-half of such portion in other cases.

**Rule 4.**—Each surviving daughter of the intestate shall take half-a-share whether she is unmarried, married or a widow; rich or poor; and with or without issue or possibility of issue.

#### *Illustrations*

(i) The surviving heirs of an intestate are three sons, A, B and C, five grandsons by a pre-deceased son D, and two great-grandsons by a pre-deceased son of another pre-deceased son E. A, B and C take one share each under Rule 2, and the branches of D and E get one share each under Rule 3 (1). The grandsons in D's branch and the great grandsons in E's branch divide the share allotted to their respective branches equally by virtue of Rule 3(2). Each son of the intestate therefore takes one-fifth of the heritable property, each grandson one-twentyfifth, and each great grandson one-tenth.

(ii) Only a widow or daughter survives an intestate. She takes the whole of the heritable property.

(iii) The surviving heirs are a widow and two grandsons by a predeceased son. The widow takes one share under Rule 1, and the grandsons together take one share under Rule 3 (1). The widow therefore takes one-half of the heritable property and each grandson one-fourth.

(iv) The surviving heirs are a daughter and the widow of a predeceased son. Under Rule 4, the daughter takes half-a-share; and under Rule 3 (1), the daughter-in-law also takes half-a-share. The heritable property is thus equally divided between the two.

(v) The surviving heirs are a son, a daughter, and the widow of a predeceased son. Under Rule 2, the son gets one share; under Rule 4, the daughter gets half-a-share; under Rule 3 (1) the widow of the predeceased son gets half-a-share. In the result, the son takes half the property and the daughter and the daughter-in-law take one-fourth each.

(vi) The surviving heirs are a son, a daughter, and the widow and the son of a predeceased son. Under Rule 2, the son gets one share; under Rule 4, the daughter gets half-a-share; under Rule 3(1) the widow and the son of the predeceased son get between them one share, which has then to be distributed equally between them. In the result, the son takes two-fifths of the property and the other heirs one-fifth each.

(vii) The surviving heirs are—

- (a) a widow
- (b) a son
- (c) a daughter
- (d) the widow of a pre-deceased son
- (e) the widow and two sons of another predeceased son.

Under Rule 1, the widow gets one share; under Rule 2, the son gets one share; under Rule 4, the daughter gets half-a share; under Rule 3(1), the widow of the first mentioned predeceased son—(d) above—gets half-a-share; under the same Rule, the heirs mentioned in (e) above between them get one share, which has then to be distributed equally among them. In the result, the widow and the son of the intestate each take one-fourth of the property; the daughter and the daughter-in-law mentioned in (d) each take one-eighth; and the remaining heirs each take one-twelfth.

(viii) The surviving heirs are—

- (a) a son
- (b) the widow and three sons of a predeceased son
- (c) the widow of a predeceased son of the predeceased son referred to in (b).

The son gets one share under Rule 2, and the heirs in entries (b) and (c) together, get one share. The latter share should be distributed, by virtue of Rule 3(2), so that the widow and each of the sons in entry (b) get one portion each and the widow in entry (c) gets one-half of such a portion. In the result, the intestate's son gets one-half of the heritable property, the widow of his predeceased son gets one-ninth, each of the three sons of such pre-deceased son also gets one-ninth, and the widow of the intestate's grandson gets one-eighteenth.

**8. Order of succession among non-enumerated heirs.**—(1) Where there is no enumerated heir, the order of succession among the intestate's agnates, or failing such agnates, among his cognates, shall be determined by applying the Rules of Preference in section 9.

(2) For the purpose of applying the said Rules, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent, or degrees of descent, or both, as the case may be.

(3) Degrees of ascent and degrees of descent shall be computed in the manner indicated in the illustrations below :—

#### *Illustrations*

(i) The heir to be considered is the father's mother's father of the intestate. He has no degrees of descent, but has three degrees of ascent represented in order by (1) the intestate's father, (2) that father's mother, and (3) her father (the heir).

(ii) The heir to be considered is the father's mother's father's mother of the intestate. She has no degrees of descent, but has four degrees of ascent represented in order by (1) the intestate's father, (2) that father's mother, (3) her father, and (4) his mother (the heir).

(iii) The heir to be considered is the son's daughter's son's daughter of the intestate. She has no degrees of ascent, but has four degrees of descent represented in order by (1) the intestate's son, (2) that son's daughter, (3) her son, and (4) his daughter (the heir).

(iv) The heir to be considered is the mother's father's father's daughter's son of the intestate. He has three degrees of ascent represented in order by (1) the intestate's mother, (2) her father, and (3) that father's father, and two degrees of descent represented in order by (1) the daughter of the common ancestor, viz., the mother's father's father and (2) her son (the heir).

**9. Rules of Preference.**—The Rules of Preference referred to in section 8 are as follows :—

**Rule 1.**—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

**Rule 2.**—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

**Rule 3.**—Where the number of degrees of descent is also the same or none, the heir who is in the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

**Rule 4.**—Where the two lines cannot be so distinguished, the heir who is a male is preferred to the heir who is a female.

**Rule 5.**—Where neither heir is entitled to be preferred to the other under the foregoing Rules, they take together.

#### *Illustrations*

In the following illustrations, the letters F and M stand for the father and mother respectively in that portion of the line which ascends from the intestate to the common ancestor, and the letters S and D for the son and daughter respectively in that portion of the line which descends from the common ancestor to the heir. Thus MFSS stands for the intestate's mother's father's son's son (mother's brother's son) and FDS for the intestate's father's daughter's son (sister's son).

(i) The competing heirs are (1) FFSSD (father's brother's son's daughter) and (2) FDDS (sister's daughter's son). Although No. (2) is descended from a nearer ancestor, yet, as No. (1) is an agnate while No. (2) is only a cognate, No. (1) is preferred to No. (2).

(ii) The competing heirs are (1) SDSS (son's daughter's son's son) and (2) FDDS (sister's daughter's son). No. (1) who has no degree of ascent is preferred to No. (2) who has one degree of ascent.

(iii) The competing heirs are (1) FDDD (sister's daughter's daughter) and (2) MFSSD (maternal uncle's son's daughter). The former who has one degree of ascent is preferred to the latter who has two such degrees.

(iv) The competing heirs are (1) FDSSS (sister's son's son's son) and (2) MFSSD (maternal uncle's son's daughter). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(v) The competing heirs are (1) MFDSS (mother's sister's son's son) and (2) MPFDS (mother's father's sister's son). The former who has two degrees of ascent is preferred to the latter who has three such degrees.

(vi) The competing heirs are (1) MFM (mother's father's mother) and (2) FFFDSS (father's father's sister's son's son). The number of degrees of ascent in both cases is the same, *viz.*, three, but the former has no degree of descent while the latter has three such degrees. The former is therefore preferred.

(vii) The competing heirs are (1) FMF (father's mother's father) and (2) MFF (mother's father's father). The number of degrees of ascent in both cases is the same, and there are no degrees of descent. The lines of the two heirs diverge at the very first point, No. (1) being in the male line and No. (2) in the female line. No. (1) is preferred to No. (2).

(viii) The competing heirs are (1) FDSS (sister's son's son) and (2) FDDS (sister's daughter's son). The heirs are equally near both in ascent and descent. The dissimilarity in the lines occurs at the third point. At this point, No. (1) is in the male line and No. (2) in the female line. No. (1) is therefore preferred.

(ix) The competing heirs are (1) FMFSS (father's mother's brother's son) and (2) FMFDS (father's mother's sister's son). The former is preferred.

(x) The competing heirs are (1) FDDS (sister's daughter's son) and (2) FDDD (sister's daughter's daughter). The former is preferred.

(xi) The competing heirs are a daughter's daughter's son of one sister (FDDDD3) and a daughter's daughter's son of another sister (FDDDS). Both of them take the estate in equal shares.

**10. Heirs who are not related.**—If there is no enumerated heir, agnate or cognate entitled to succeed under section 4, the heritable property of the intestate shall devolve, in the first instance, upon his preceptor (*acharya*); if there is no preceptor, upon the intestate's disciple (*sishya*); and if there is no disciple, upon the intestate's fellow student (*sa-brahmachari*).

**Explanation.**—For the purposes of this section, the imparting or receiving of purely religious instruction at the house of the preceptor (*acharya*) or of the same preceptor (*acharya*), as the case may be, shall alone be taken into account.

**11. Rules for hermits, etc.**—(1) Where a person completely and finally renounces the world by becoming a hermit (*vanaprastha*), an ascetic (*yati* or *sanyasi*), or a perpetual religious student (*naishthika brahmachari*), his property shall devolve upon his heirs, in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any property acquired by such a person after his renunciation shall devolve on his death, not upon his relatives, but as follows :—

(a) In the case of a hermit (*vanaprastha*), upon a spiritual brother belonging to the same hermitage (*dharmabhratrakatirtha*).

(b) In the case of an ascetic (*yati* or *sanyasi*), subject to any custom or usage governing the case, upon his virtuous disciple (*sacchishya*).

(c) In the case of a perpetual religious student (*naishthika brahmachari*), upon his preceptor (*acharya*).

**12. Application of Partition Act, 1893, in certain cases.**—Where, after the commencement of this Code, a share in any immovable property of a male intestate or in any business carried on by him, whether solely or in conjunction with others, devolves upon one or more of the intestate's sons, sons' sons, or sons' sons' sons together with other relatives, and one of the latter sues for partition, the provisions of the Partition Act, 1893 (IV of 1893), shall apply as if he or she were the transferee of a share of a dwelling-house and the intestate's family were an undivided one.

### STRIDHANA

**13. Rights of women over stridhana.**—A woman shall have the same rights over stridhana acquired by her after the commencement of this Code, including the right to dispose of it by transfer *inter vivos* or by will, as a man has over property acquired by him in the like manner, that is to say, a woman's rights over stridhana shall not be deemed to be restricted in any respect whatsoever by reason only of her sex.

### Illustrations

(i) A Hindu dies intestate leaving a widow or daughter as his heir. She inherits his entire estate under this Part. By virtue of the above section, she will have full rights therein as if she were a male heir.

(ii) A Hindu dies, leaving a will by which he confers upon his widow a life estate in his property with no power of alienating the *corpus*. She will succeed only to a life estate under this section. The reason is that even if a man had succeeded to the property in the like manner, that is to say, by a similar provision in the will, he too would have taken only a life estate; the restriction in this case is not by reason of the widow's sex but by reason of the provision in the will.

**14. Order and mode of succession to stridhana.**—(1) The stridhana of a woman dying intestate, in so far as it consists of heritable property, shall, subject to the proviso to section 3, devolve upon the following relatives of the intestate, in the order mentioned, namely :—

(1) Daughter ; son ;

(2) Grandchild ;

(3) Husband ;

(4) Mother ;

(5) Father ;

(6) Husband's heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his wife :

(7) Mother's heirs, in the same order and according to the same rules as would have applied, if the property had been hers and she had died intestate in respect thereof immediately after her daughter;

(8) Father's heirs, in the same order and according to the same rules as would have applied, if the property had been his and he had died intestate in respect thereof immediately after his daughter.

(2) Where of two or more heirs of the intestate, no one is entitled to be preferred to any other under the provisions of sub-section (1), they shall take together.

(3) (i) In *stridhana* devolving on children under entry (1) in sub-section (1) a son shall take half the share of a daughter.

(ii) Grandchildren shall take *stridhana* devolving on them under entry (2) in sub-section (1) *per stirpes*, that is to say, the grandchildren by each deceased son or daughter shall take the share which he or she would have taken if he or she had been alive at the time of the intestate's death, the distribution among grandchildren by the same son or daughter being made so that each grandson takes half the share of a granddaughter.

(4) A daughter, son's daughter or daughter's daughter shall take the same share whether she is unmarried, married or a widow; rich or poor; and with or without issue or possibility of issue.

#### Illustrations

(i) The surviving relatives of a woman are four married grand-daughters by one daughter, A, and three unmarried grand-daughters by another daughter, B. Each of A's daughters takes 1/8th of the property and each of B's daughters takes 1/6th.

(ii) The surviving relatives of a woman are a son by one daughter, A, and a daughter by another daughter, B. A's son and B's daughter take equally.

(iii) The surviving relatives of a woman are a son and two daughters by a son, A, and three sons and four daughters (two of whom are married) by a daughter, B. A's son takes 1/15th of the property, each of A's two daughters takes 2/15ths; each of B's three sons takes 2/33rds; and each of B's four daughters takes 4/33rds.

(iv) A maiden dies leaving a mother and a brother. Her property goes to the mother.

#### GENERAL PROVISIONS

15. Full blood preferred to half blood.—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

*Explanation.*—In the Province of Bombay, the widow of a person related to an intestate by full blood shall be preferred to the widow of a person related to him in the same way by half blood.

#### Illustrations

(i) A brother by full blood is preferred to a brother by half blood; but a brother by half blood succeeds before a brother's son by full blood, a brother being a nearer heir than a brother's son.

(ii) A paternal uncle by half blood is preferred to a paternal uncle's son by full blood, an uncle being a nearer heir than an uncle's son.

(iii) A full brother's daughter's daughter is preferred to a half brother's daughter's daughter but the former is not preferred to a half brother's daughter's son, as the nature of the relationship is not the same in the two cases. The latter, who is a nearer heir by virtue of Rule 4 in section 9, is preferred although he is only related by half blood.

(iv) In Bombay, a full brother's widow is preferred to a half brother's widow.

**16. Right of child in womb.**—A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate. The inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

**17. Rights of surviving spouse and descendants of a valid marriage.**—The surviving spouse and descendants of a valid marriage contracted by a male or female Hindu outside his or her caste, if any, shall, for all the purposes of this Code, have the same rights as if the marriage had been contracted within his or her own caste.

**18. Hermit, etc., disqualified.**—A person who has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 11 shall be disqualified from inheriting the property of any of his relatives by blood, marriage or adoption.

**19. Unchaste wife disqualified.**—A woman who, after marriage, has been unchaste during her husband's lifetime, shall, unless he has condoned the unchastity, be disqualified from inheriting his property :

Provided that the right of a woman to inherit to her husband shall not be questioned on the above ground, unless a Court of Law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed.

**20. Murderer disqualified.**—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

**21. Convert's descendants disqualified.**—Where, before or after the commencement of this Code, a Hindu has ceased or ceases to be one by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

**22. Succession when heir disqualified.**—If any person is disqualified from inheriting any property under sections 18, 19, 20 or 21, it shall devolve as if such person had died before the intestate.

**23. Disease, defect, etc., not to disqualify.**—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in sections 18, 19, 20 or 21, on any other ground whatsoever.

**24. Mode of succession of two or more heirs.**—If two or more heirs succeed together to the property of an intestate, they shall take the property—

(a) save as otherwise expressly provided in this Part, *per capita* and not *per stirpes* ; and

(b) as tenants in common and not as joint tenants.

**25. Escheat.**—If an intestate has left no heir, or no heir qualified to succeed to his or her heritable property, such property shall go to the Crown ; and the Crown shall take the property subject to all the obligations and liabilities to which an heir would have been subject.



## PART III.—TESTAMENTARY SUCCESSION

**Indian Succession Act, 1925, and other enactments to apply to testamentary succession of Hindus.**—In regard to testamentary succession, Hindus shall be governed by such provisions of the Indian Succession Act, 1925 (XXXIX of 1925), and other enactments as may, for the time being, be applicable to them.

### PART III-A.—GENERAL PROVISIONS CONNECTED WITH SUCCESSION

#### DIVISION I.—SCOPE AND OPERATION OF PARTS II AND III

**1. Devolution of interest in joint family property.**—Any interest in joint family property (other than property excluded from the operation of Part II by section 1 thereof) possessed by a male Hindu dying after the commencement of this Code, shall devolve in every case, not by survivorship, but by testamentary or intestate succession, as the case may be.

##### *Illustration*

A male Hindu who was a member of a joint family governed by the Mitakshara school of Hindu Law when this Code comes into operation dies intestate, leaving him surviving a widow and a daughter, but no son or descendant of a son. His interest in the joint family property, other than agricultural land, will pass to the widow and daughter by succession, and not to the other coparceners by survivorship.

**2. No right by birth in property devolving after commencement of Code.**—Where after the commencement of this Code, the property of any male Hindu (including his interest in joint family property) devolves by testamentary or intestate succession on his son, son's son, or son's son's son, the latter shall take the property in the same manner and have the same right to dispose of it by transfer *inter vivos* or by will as he would have had if he had not been related to the deceased.

#### DIVISION II.—MAINTENANCE

**3. Maintenance explained.**—In sections 4 to 9, the expression "maintenance" includes—

(i) in all cases, provision for food, clothing, residence, education, and medical attendance and treatment; and

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage, including the value of gifts and presents to her or to the bridegroom on the occasion.

**4. Right to maintenance of certain dependants out of estate of deceased.**—Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a male Hindu dying after the commencement of this Code, or where, in a case of testamentary succession, the share so obtained by a dependant is less than what would be awarded to him or her by way of maintenance under this Part, he or she is entitled, subject to the provisions of this Part, to maintenance from those who take the estate, the liability of each being in proportion to the value of the share or part of the estate taken by him or her:

Provided that no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would if the liability to contribute were enforced become, less than what would be awarded to him or her by way of maintenance under this Part.

**5. Dependants enumerated.**—(1) The following relatives of the deceased shall be deemed to be his dependants for the purposes of the foregoing section:—

(i) His father.

(ii) His mother.

(iii) His widow, so long as she does not remarry.

(iv) His son, son of his pre-deceased son, or son of a pre-deceased son of his pre-deceased son, who is a minor, so long as he remains one, provided and to the extent that he is unable to obtain maintenance, in the case of a grandson, from his father's estate, and in the case of a great-grandson, from the estate of his father or father's father.

(v) His unmarried daughter, so long as she remains unmarried.

(vi) His married daughter, provided and to the extent that she is unable to obtain maintenance from her husband or from her son, if any, or his estate.

(vii) His widowed daughter, provided and to the extent that she is unable to obtain maintenance (a) from the estate of her husband, or (b) from her son, if any, or his estate, or (c) from her father-in-law or his father or the estate of either of them.

(viii) Any widow of his son or of a son of his predeceased son, so long as she does not remarry, provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son if any, or his estate; or in the case of a grandson's widow, also from her father-in-law's estate.

(ix) His minor illegitimate son, so long as he remains a minor.

(x) His unmarried illegitimate daughter, so long as she remains unmarried.

(2) A concubine who was kept continuously by the deceased up to the time of his death and whose connection with him was not incestuous or adulterous shall also be deemed to be a dependant for the purposes of sub-section (1), unless she becomes the concubine of another man, or leads the life of a prostitute, or marries or remarries.

**6. Amount of maintenance.**—(1) In determining the amount of maintenance, if any, to be awarded to a dependant, regard shall be had to—

(a) the net value of the estate of the deceased, after providing for the payment of his debts;

(b) the share, if any, of such estate obtained by the dependant;

(c) the position and status of the deceased and of the dependant;

(d) the degree of relationship between the two;

(e) the reasonable wants of the dependant;

(f) the past relations between the dependant and the deceased;

(g) in the case of a widow of the deceased, the income, if any, which she may reasonably be expected to derive from *stridhana* given to her by him or his father, but not the income from her own earnings or any other source; and

(h) in the case of any other dependant, the value of his or her separate property (including, in the case of a woman, *stridhana* of all kinds) and any income derived from such property, or from his or her own earnings, or from any other source;

Provided that the marriage expenses admissible in respect of an unmarried daughter shall in no case exceed the value of one-half of what she would have inherited from the deceased, if he had died intestate.

(2) It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded to a dependant, with due regard to the considerations set out in sub-section (1), so far as they are applicable.

(3) The amount of maintenance, whether fixed by a decree of Court or by agreement, either before or after the commencement of this Code, may be altered subsequently, if there is a material change in the circumstances, justifying such alteration.

7. **Maintenance of widow residing outside family house.**—Where a widow of the deceased, in contravention of the terms of a will or deed executed by him, resides elsewhere than in his family house without just cause, she shall not be entitled to any maintenance so long as she so resides.

8. **Debts to have priority.**—Debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Division.

9. **Maintenance when to be a charge.**—A dependant's claim for maintenance under the above provisions shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of Court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

### DIVISION III.—PRESUMPTION OF SURVIVORSHIP IN REGARD TO CLAIMS TO PROPERTY

10. Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

## PART IV.—MARRIAGE AND DIVORCE

### CHAPTER I.—CELEBRATION OF MARRIAGE

#### *Introductory*

1. **Interpretation.**—In this Part, unless there is anything repugnant in the subject or context—

(a) (i) “*sapinda* relationship” with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;

(ii) two persons are said to be “*sapindas*” of each other if one is a lineal ascendant of the other within the limits of *sapinda* relationship, or if they have a common lineal ascendant who is within the limits of *sapinda* relationship with reference to each of them.

(b) two persons are said to be within “the degrees of prohibited relationship” if one is a lineal ascendant of the other, or was the wife or husband of a lineal ascendant or descendant of the other, or if the two are brother and sister, uncle and niece, aunt and nephew, or the children of two brothers or of two sisters.

**Explanation.**—For the purposes of clauses (a) and (b), relationship includes—

(i) relationship by half or uterine blood as well as by full blood;

(ii) illegitimate blood relationship as well as legitimate;

(iii) relationship by adoption as well as by blood;

and all terms of relationship in those clauses shall be construed accordingly.

#### *Illustrations*

(i) C, the common ancestor, is the father's mother's father's father of A and the mother's father of B. As C is the fifth generation from A in A's father's line and the third generation from B in B's mother's line, A and B are *sapindas* of each other;

(ii) A and B are consanguine brother and sister. Their descendants, within the limits of sapinda relationship, will be sapindas of each other. The descendants of their father and his ancestors will also be sapindas of A and B and their descendants within the limits of sapinda relationship. But the maternal grandfather of A will not necessarily be a sapinda of the maternal grandfather of B, nor will a son of the former maternal grandfather necessarily be a sapinda of a son of the latter.

(iii) A and B are *uterine* brother and sister. Their descendants, within the limits of sapinda relationship, will be sapindas of each other. The descendants of their mother and her ancestors will also be sapindas of A and B and their descendants within the limits of sapinda relationship. But the paternal grandfather of A will not necessarily be a sapinda of the paternal grandfather of B, nor will a son of the former paternal grandfather necessarily be a sapinda of a son of the latter.

**2. Two forms of Hindu marriage.**—There shall be two forms of the Hindu marriage, namely :—

(a) a sacramental marriage ;

(b) a civil marriage.

#### SACRAMENTAL MARRIAGE

**3. Requisites of a sacramental marriage.**—A sacramental marriage may be solemnized between any two Hindus upon the following conditions, namely :—

- (1) neither party must have a spouse living at the time of the marriage ;
- (2) neither party must be an idiot or a lunatic at the time of the marriage ;
- (3) the bridegroom must have completed the age of eighteen years, and the bride the age of fourteen years ;
- (4) the parties must not be within the degrees of prohibited relationship ;
- (5) the parties must not be sapindas of each other, unless the custom or usage governing each of them permits of a sacramental marriage between the two ; and
- (6) if the bride has not completed her sixteenth year, the consent of her guardian in marriage must have been obtained for the marriage.

*Explanation.*—For the removal of doubts, it is hereby declared that a sacramental marriage solemnized between Hindus before the commencement of this Code which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid, by reason only of the fact that the parties thereto belonged to the same *gotra* or *pravara*, or belonged to different subdivisions of the same caste.

**4. Ceremonies required.**—(1) A sacramental marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the *saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire) the marriage becomes complete and binding when the seventh step is taken.

**5. Sacramental marriage not to be invalid in certain cases.**—Unless there was force or fraud, a sacramental marriage shall not, after it has been completed, be deemed to be invalid or ever to have been invalid, merely on the ground that the consent of the bride's guardian in marriage was not or had not been obtained.

**6. Entering of particulars relating to sacramental marriage in a register.**—(1) For the purpose of facilitating the proof of sacramental marriages, rules may be prescribed for the entering of particulars relating to such marriages in such manner as may be prescribed in the Hindu Civil marriage Certificate Book kept under section 17 of this Chapter.

(2) No such entry shall be made except with the consent in writing of both the parties to the marriage, provided that where the wife has not completed the age of sixteen years, the consent of her guardian instead of her consent shall be required.

(3) The making of such an entry shall not be compulsory in the case of a sacramental marriage and the validity of the marriage shall in no way be affected by the omission to make the entry.

#### CIVIL MARRIAGE

**7. Requisites of a civil marriage.**—A civil marriage may be contracted under this Chapter by any two Hindus, upon the following conditions, namely:—

(1) neither party must have a spouse living at the time of the marriage ;

(2) neither party must be an idiot or a lunatic at the time of the marriage ;

(3) the bridegroom must have completed the age of eighteen years and the bride the age of fourteen years ;

(4) the parties must not be within the degrees of prohibited relationship, and ;

(5) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her guardian in marriage, provided that no such consent shall be required in the case of a widow.

**8. Marriage Registrars.**—(1) The Provincial Government may appoint one or more persons, being Hindus, to be Registrars under this Chapter for any portion of the Province.

(2) Any officer so appointed shall be called "Registrar of Hindu Civil Marriages" and is hereinafter referred to as "the Registrar."

(3) The portion of the Province for which any such officer is appointed is hereinafter referred to as his "district."

**9. Notice of marriage to Registrar.**—(1) When a civil marriage is intended to be contracted under this Chapter, both the parties must give notice in writing to the Registrar before whom it is to be contracted.

(2) The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for not less than thirty days before such notice is given.

(3) Such notice may be in the form specified in the Third Schedule.

**10. Marriage Notice Book and publication.**—(1) The Registrar shall file all notices given under section 9 and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book furnished to him for that purpose by the Provincial Government, to be called the "Hindu Civil Marriage Notice Book" and such book shall be opened at all reasonable times, without fee, to every person desirous of inspecting the same.

(2) The Registrar shall also publish every such notice in such manner as he may consider suitable.

**11. Objection to marriage.**—(1) Thirty days after notice of an intended marriage has been given under section 9, the marriage may be contracted unless it has been objected to under sub-section (2).

(2) Any person may, before the expiration of thirty days from the giving of the notice of an intended marriage, object to the marriage on the ground that it would contravene one or more of the conditions proscribed in clauses (1), (2), (3), (4) and (5) of section 7.

(3) The nature of the objection made shall be recorded in writing by the Registrar in the Hindu Civil Marriage Notice Book, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

**12. Procedure of Registrar on receipt of objection.**—(1) If an objection is made under section 11 to an intended marriage, the Registrar shall not allow the marriage to be contracted until the lapse of thirty days from the receipt of such objection, if there is a Court of competent jurisdiction open at the time, or, if no such Court is open at the time, until the lapse of thirty days from the opening of such a Court.

(2) The person objecting to the intended marriage may file a suit in the District Court having local jurisdiction, or in any other Court empowered in this behalf by the Provincial Government and having such jurisdiction, for a decree declaring that such marriage would contravene one or more of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 7, and the officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed.

(3) If the certificate referred to in sub-section (2) is lodged with the Registrar within thirty days from the receipt by him of the objection, if there is a Court of competent jurisdiction open at the time, or if no such Court is open at the time, within thirty days from the opening of such a Court, the marriage shall not be contracted until the decision of such Court has been given and the period allowed by law for appeal from such decision has elapsed, or, if there is an appeal from such decision, until the decision of the Appellate Court has been given.

(4) If such certificate is not lodged in the manner and within the period laid down in sub-section (3), or if the decision of the Court is that the marriage would not contravene any of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 7, the marriage may be contracted.

(5) If the decision of the Court is that the marriage would contravene any of the conditions prescribed in clauses (1), (2), (3), (4) and (5) of section 7, the marriage shall not be contracted.

**13. Power of Court to fine when objection not reasonable.**—If it appears to the Court that the objection was not reasonable and *bona fide*, it may impose a fine not exceeding one thousand rupees on the person objecting, and award it or any part thereof to the parties to the intended marriage.

**14. Declaration by parties and witnesses.**—Before the marriage is contracted, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form specified in the Fourth Schedule. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her guardian, except in the case of a widow; and, in every case, it shall be countersigned by the Registrar.

**15. Marriage how to be contracted.**—The marriage shall be contracted in the presence of the Registrar and of the three witnesses who signed the declaration. The contracting may be done in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I, (A), take thee, (B), to be my lawful wife (or husband) "

**16. Marriage where to be contracted.**—The marriage may be contracted—

(a) at the office of the Registrar, or

(b) at such other place within reasonable distance therefrom as the parties desire, upon such conditions and on the payment of such additional fee as may be prescribed.

**17. Certificate of marriage.**—When the marriage has been contracted, the Registrar shall enter a certificate thereof, in the form specified in the Fifth Schedule, in a book to be kept by him for that purpose and to be called the "Hindu Civil Marriage Certificate Book", and such certificate shall be signed by the parties to the marriage and the three witnesses.

**18. Registration of sacramental marriage as civil marriage.**—(1) Any two persons between whom a ceremony of marriage in any Hindu form has been performed, before or after the commencement of this Code, may at any time apply to the Registrar of the district where either of them has resided for not less than thirty days before the application, to have their marriage registered as a civil marriage contracted before the Registrar.

(2) If after giving public notice of the application and allowing a period of thirty days for objections and hearing any objections received within that period the Registrar is satisfied—

(a) that the ceremony of marriage was performed on the date mentioned in the application and that the parties have been living together as husband and wife ever since ;

(b) that the conditions in clauses (1) to (4) of section 7 are satisfied as between the parties to the marriage on the date of the application.

(c) Where either party, not being a widow at the time of the marriage, has not on the date of the application completed the age of twenty-one years, that the consent of his or her guardian in marriage has been obtained to the registration of the marriage as a civil marriage ;

he shall enter a certificate of the marriage in the Hindu Civil Marriage Certificate Book in the form specified in the Sixth Schedule, and such certificate shall be signed by the parties to the marriage as well as by three witnesses; and thereupon the marriage shall be deemed to have been a civil marriage, valid for all purposes, as from the date of the application; and all children born after the date of the ceremony aforesaid (whose names shall also be entered in the certificate and the Hindu Civil Marriage Certificate Book) shall in all respects, be deemed to be, and always to have been, the legitimate children of their parents.

**Explanation.**—The registration of a marriage as a civil marriage under this section shall not be refused on the ground that, at the time when the ceremony of marriage was performed, neither party or only one of the parties was a Hindu.

**19. Marriage Certificate Book to be open to inspection, etc.**—The Hindu Civil Marriage Certificate Book shall, at all reasonable times, be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

**20. Transmission of copies of entries in Marriage Certificate Book to the Registrar-General of Births, Deaths and Marriages.**—The Registrar shall send to the Registrar-General of Births, Deaths, and Marriages for the Province within which his district is situate, at such intervals as may be prescribed, a true copy, in the prescribed form and certified by him, of all entries made by him in the Hindu Civil Marriage Certificate Book since the last of such intervals.

**21. Fees.**—The fees to be paid to the Registrar for the duties to be discharged by him under this Chapter shall be such as may be prescribed.

**22. Penalty for signing false declaration or certificate.**—Every person making, signing or attesting any declaration or certificate required under this Chapter, containing a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to be guilty of the offence described in section 199 of the Indian Penal Code (XLV of 1860).

## GENERAL PROVISIONS

**23. Guardianship in marriage.**—(1) Subject to the provisions of Part V, the following persons, in the order given, are entitled to be guardians in marriage—

(a) of a Hindu girl who has not completed the age of sixteen years, for the purposes of her sacramental marriage;

(b) of a Hindu boy, or of a Hindu girl other than a widow, who has not completed the age of twenty-one years, for the purposes of his or her civil marriage, or of the registration of his or her marriage as a civil marriage, under this Chapter:—

(1) the father ;

(2) the mother ;

(3) the paternal grandfather ;

(4) the brother by full or half blood, a brother by full blood being preferred to one by half blood and as between brothers both by full or half blood, the elder being preferred ;

(5) the paternal uncle by full or half blood, subject to the like rules of preference as are set out in entry (4) above ;

(6) the maternal grandfather ;

(7) the maternal uncle, subject to the like rules of preference as are set out in entry (4) above ;

(8) any other relative, the nearer being preferred to the more remote and as between relatives related in the same way, subject to the like rules of preference as are set out in entry (4) above.

**Explanation.**—In determining which of two relatives is nearer for the purposes of entry (8) above, the test shall be, which of them is first entitled to inherit to the ward's heritable property according to the rules of intestate succession in Part II.

(2) The guardian of a boy or girl referred to in clause (b) of sub-section (1) shall be a person who has completed his or her twenty-first year.

(3) Where any person entitled to be the guardian in marriage under the foregoing provisions refuses, or is by reason of absence, disability or other cause, unable or unfit, to act as such, the person next in order shall be entitled to be the guardian.

(4) Nothing in this Chapter shall affect the jurisdiction of a Court to prohibit by injunction an intended marriage arranged by the guardian, if in the interests of the minor, the Court thinks it necessary to do so.

**24. Punishment of bigamy.**—Any marriage between two Hindus celebrated after the commencement of this Code is void, if at the date of such marriage, either party had a husband or wife living ; and the provisions of sections 494 and 495 of the Indian Penal Code (XLV of 1860) shall apply accordingly.

**25. Power to make Rules.**—The Provincial Government may, by notification in the Official Gazette, make rules to regulate any matter which is to be, or may be, prescribed under this Chapter.

#### CHAPTER II—CONSEQUENCES OF MARRIAGE INCLUDING DUTIES OF HUSBAND AND WIFE

**26. Maintenance of wife.**—(1) Subject to the provisions of this section, a Hindu husband is bound to maintain his wife and after his death, his father shall be bound to maintain her if he has the means to do so whether out of joint or separate property.

(2) A Hindu wife may claim maintenance from her husband only if and while she lives with him :

Provided that she shall be entitled to live separately from him without forfeiting her claim to maintenance—

(a) if he is suffering from a loathsome disease;



- (b) if he keeps a concubine ;
- (c) if he has been guilty of such cruelty as to render it unsafe or undesirable for her to live with him ;
- (d) if he is guilty of desertion, that is to say, of abandoning her without just cause and without her consent or against her wish, for a period of not less than two years ;
- (e) if he has ceased to be a Hindu by conversion to another religion ;
- (f) if there is any other cause justifying her living separately.

(3) The obligation of a father-in-law to maintain his widowed daughter-in-law under sub-section (1) only extends in so far as she is unable to obtain maintenance from her husband's estate or from her son, if any, or his estate, and ceases on her re-marriage.

**Explanation.**—The provisions of this section shall also apply to marriages celebrated before the commencement of this Code.

**27. Succession to the property of parties to certain civil marriages and their issue.**—Notwithstanding anything contained in clause (iii) of section 1 of Part II or in any other enactment for the time being in force, succession to the heritable property of any Hindu governed by the *Marumakkattayam*, *Aliyasantana* or *Nambudri* law of inheritance who contracts or has contracted a civil marriage with any other Hindu under this Part or under the Special Marriage Act, 1872 (III of 1872) or whose marriage has been registered as a civil marriage under section 18 of this Part and to the heritable property of the issue of such marriage, shall, except as regards the property referred to in clauses (i) and (ii) of the said section 1, be regulated by the provisions of this Code.

**28. Consideration for consenting to marriage to be trust property.**—Whereas consideration for consenting to a marriage celebrated after the commencement of this Code, any property is transferred by, or on behalf of, either party to the marriage or any of his or her relatives, to any relative of the other party, whether directly or indirectly, the transferee shall hold the property in trust for the benefit of the wife and transfer it to her upon her completing the age of eighteen years, or if she dies without completing that age, to her *stridhana* heirs as specified in section 14 of Part II.

(2) Where the wife has completed the age of eighteen years before the marriage, the property shall be transferred to her at any time when she requires the transferee to do so.

(3) If a marriage would not in fact have taken place but for the consent thereto accorded by a relative of either party to the marriage, such consent shall be deemed to be a consent within the meaning of this section, although it might not have been necessary in law for the celebration of a valid marriage.

### CHAPTER III.—NULLITY, INVALIDATION AND DISSOLUTION OF MARRIAGES

**29. Decree of nullity or invalidity of marriage.**—(1) Either party to a marriage celebrated before or after the commencement of this Code may, at any time, present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void on either of the following grounds, namely :—

(i) that a former husband of the female party, or (except in the case of a sacramental marriage celebrated before the commencement of this Code) a former wife of the male party, was living at the time of the marriage and the marriage with such former husband or wife was then in force ;

(ii) that (except in the case of a marriage celebrated before the commencement of this Code which was valid at the time of the celebration) the parties are within the degrees of prohibited relationship as defined in clause (b) of section 1.

(2) Either party to a marriage so celebrated may, at any time within three years after the celebration of the marriage, or in the case of a marriage celebrated before the commencement of this Code, within two years of such commencement, present a petition to the District Court or to the High Court, praying that his or her marriage may be declared invalid on any of the following grounds, namely :—

(i) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the suit ;

(ii) that the parties, having been married in the sacramental form, are *sapindas* of each other and no custom or usage permits of a sacramental marriage between them, provided that this clause shall not apply where the marriage is subsequently registered as a civil marriage under section 18 ;

(iii) that either party is an idiot, or was a lunatic at the time of the marriage.

(3) Either party to a marriage so celebrated may also present a petition to the High Court praying that his or her marriage may be declared invalid on the ground that the consent of such party, or where the consent of his or her guardian is requisite under the provisions of Chapter I, the consent of such guardian, was obtained by force or fraud :

Provided that the Court shall dismiss such petition—

(a) if it is presented more than a year after the force had ceased or the fraud had been discovered, or more than a year after the commencement of this Code, as the case may be, or

(b) if the petitioner has, with his or her free consent, lived with the other party to the marriage as husband and wife after the force had ceased or the fraud had been discovered, as the case may be.

(4) Every decree of nullity or invalidity of a marriage made by a District Court shall be subject to confirmation by the High Court.

(5) Where a marriage is declared null and void on the ground that a former husband or wife was living and it is adjudged that the subsequent marriage was contracted in good faith and that one or both of the parties fully believed that the former husband or wife was dead, or where a marriage is declared invalid on the ground specified in clause (ii) or (iii) of sub-section (2) or in sub-section (3), children begotten before the decree is made shall be specified therein and shall in all respects be deemed to be, and always to have been, the legitimate children of their parents.

**30. Decree for dissolution of marriage.**—Either party to a marriage celebrated before or after the commencement of this Code may present a petition to the District Court or to the High Court, praying that his or her marriage may be dissolved on the ground that the other party—

(a) has, without just cause, deserted the petitioner for a period of not less than five years immediately preceding the presentation of the petition ; or

(b) has ceased to be a Hindu by conversion to another religion ; or

(c) if a husband, has any other woman as a concubine, and if a wife, is a concubine of any other man or leads the life of a prostitute ; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of not less than five years immediately preceding the presentation of the petition ; or

(e) is suffering from a virulent and incurable form of leprosy ; or

(f) has been suffering from venereal disease in a communicable form for a period of not less than five years immediately preceding the presentation of the petition ; or

(g) has been guilty of such cruelty as to render it unsafe for the petitioner to live with the other party.

**31. Decree for dissolution to be confirmed by High Court.**—Every decree for the dissolution of a marriage made by a District Court shall be subject to confirmation by the High Court.

**32. Power to make rules for associating assessors with Court.**—(1) The Provincial Government may, by notification in the Official Gazette, make rules for associating assessors with the District Court or the High Court, as the case may be, in the trial of all or any petitions presented under this Chapter.

(2) Every assessor shall be a Hindu.

(3) Rules made under this section shall specify—

(i) the number of the assessors to be so associated ;

(ii) their functions, and in particular, whether their decision or that of a majority among them shall be binding on the Court in any, and, if so, in what, matters ; and

(iii) the procedure of the Court generally.

**33. Application of Indian Divorce Act (IV of 1869).**—In this Chapter, the expressions “ District Court ”, and “ High Court ” shall have the same meaning as in the Indian Divorce Act (IV of 1869) ; and the provisions of that Act shall apply, so far as may be, in respect of the petitions presented under this Chapter, as if they were petitions presented under that Act.

**34. Customary or statutory rights of divorce not affected.**—Nothing contained in this Chapter shall be deemed to affect any right recognized by custom or conferred by any special enactment, to obtain the dissolution of a sacramental marriage, whether solemnized before or after the commencement of this Code.

#### *Illustrations*

(i) Among certain Hindu communities, divorce is now allowed by custom in certain circumstances not covered by section 30. Sacramental marriages in those communities may be dissolved in accordance with such custom. They may also be dissolved under section 30.

(ii) Where a Hindu woman governed by the *Marumakkattayam* law marries another Hindu according to the customary ceremonies, the marriage would be a sacramental marriage recognized as such by this Code. But such a marriage may be dissolved under section 6 of the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933).

### PART V—MINORITY AND GUARDIANSHIP

**1. Definitions.**—In this Part—

(a) “ minor ” means a person who has not completed the age of eighteen years ;

(b) “ natural guardian ” means any of the guardians referred to in section 4 of this Part, but does not include a guardian (i) appointed by the will of the minor's father, or (ii) appointed or declared by a Court of Law, or (iii) empowered to act as such by or under any enactment relating to any Court of Wards.

**2. Welfare of minor to be paramount consideration.**—In the appointment or declaration of any person as guardian of a Hindu minor by a Court of Law, the welfare of the minor shall be the paramount consideration and no person shall be entitled to the guardianship by virtue of the provisions of this Part or of section 23 of Part IV, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor.

**3. Guardian not to be appointed for minor's undivided interest in joint family property.**—Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest :

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

**4. Natural guardians of a Hindu minor.**—The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property, excluding his or her undivided interest in joint family property, are :—

(a) in the case of a boy or unmarried girl—the father, and after him, the mother, provided that the custody of a minor who has not completed the age of three years shall ordinarily be with the mother ;

(b) in the case of an illegitimate boy or unmarried girl—the mother and after her, the father ;

(c) in the case of a married girl—the husband.

**5. Natural guardianship of adopted son.**—The natural guardianship of an adopted son who is a minor passes, on adoption, from the family of his birth to the family of his adoption.

**6. Powers of natural guardian.**—(1) The natural guardian of a Hindu minor power, subject to the provisions of this section, to do all acts which are necessary reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor to a personal covenant.

(2) The natural guardian shall not, without the previous permission of the Court—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of any other person affected thereby.

(4) Permission to the natural guardian to do any of the acts mentioned in sub-section (2) shall not be granted by the Court except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (VII of 1890), shall apply to and in respect of an application for obtaining the permission of the Court under sub-section (2) in all respects as if it were an application for obtaining the permission of the Court under section 29 of that Act, and in particular—

(a) proceedings in connexion with the application shall be deemed to be proceedings under that Act within the meaning of section 4-A thereof;

(b) the Court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie to the High Court from an order of the Court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section.

(6) In this section, "Court" means the District Court within the local limits of which the immovable property in respect of which the application is made, or any part thereof, is situated.

**7. Revocation of authority by natural guardian.**—Where the natural guardian of a Hindu minor authorises another person to take charge of the minor, the authority is revocable unless, it is undesirable in the interests of the minor to permit revocation owing to the way in which the authority has been acted upon, or owing to the natural guardian having ceased to be a Hindu, or owing to any other reason.

**8. Testamentary guardian and his powers.**—(1) A Hindu father may, by will, appoint a guardian for any of his minor legitimate children in respect of the minor's person, or in respect of the minor's property (other than the undivided interest referred to in section 3), or in respect of both.

(2) The guardian so appointed has, after the death of the father, the right to act as the minor's guardian in preference even to the mother, and to exercise all the rights of a natural guardian under this Part to such extent and subject to such restrictions, if any, as may be specified in the will, without prejudice however to the right conferred on the mother by the proviso to clause (a) of section 4.

(3) The right of the guardian so appointed shall, where the minor is a girl, cease on her marriage.

**9. Duty of guardian to bring up minor as a Hindu.**—It shall be the duty of the guardian of a Hindu minor to bring up the minor as a Hindu.

**10. De facto guardian not to deal with minor's property.**—After this Code comes into force, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor.

## PART VI.—ADOPTION

## CHAPTER I.—FORMS, CONDITIONS AND LEGAL CONSEQUENCES OF ADOPTION

## DIVISION I.—ADOPTION IN DATTAKA FORM

1. **Dattaka adoptions to be regulated by Section I**—A son may be adopted in the dattaka form by or to any male Hindu in accordance with and subject to the provisions hereinafter contained in this Division; and all references therein to adoption or to a son taken or to be taken in adoption shall be construed, unless there is something repugnant in the subject or context, as references to adoption in the dattaka form or to a son taken or to be taken in adoption in such form, as the case may be.

2. **Adoption by widow to be to husband**—A Hindu widow may adopt a son to her husband in accordance with and subject to the provisions hereinafter contained in this Division.

3. **Daughters not to be adopted**.—No daughter shall be adopted by or to any male or female Hindu.

4. **Conditions of valid adoption**.—No adoption is valid unless—

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption;

(iv) the adoption is completed by an actual giving and taking; and

(v) the adoption complies with the other conditions mentioned in this Division.

5. **Capacity to take in adoption**.—(1) Any male Hindu who is of sound mind and has completed the age of eighteen years has the capacity to take a son in adoption:

Provided that a Hindu who has one or more wives living shall not adopt except with the consent of his wife or of one of his wives, unless the wife or all the wives as the case may be, are incapable of consent.

(2) Any Hindu widow who is of sound mind and has completed the age of eighteen years has the capacity to take a son in adoption to her husband, provided—

(a) he has not expressly or impliedly prohibited her from adopting, and

(b) her power to adopt has not terminated.

*Explanation*.—Nothing in this sub-section shall be deemed to prevent a Hindu widow who has not completed the age of eighteen years from adopting to her husband a boy named by him in an authority conferred on her in the manner hereinafter provided.

(3) Save as provided in sub-sections (1) and (2), no male or female Hindu has the capacity to take a son in adoption.

6. **Authority or prohibition in regard to adoptions**.—(1) Any male Hindu who has the capacity to take a son in adoption as aforesaid may authorise his wife to adopt a son to him after his death, or prohibit her from doing so.

(2) Where there are more wives than one, the authority may be given to, or the prohibition imposed on, any or all of them.

(3) Where a Hindu who has left two or more widows, has expressly authorised any of them to adopt a son, he shall be deemed, by implication, to have prohibited the others from adopting.

7. **Manner of giving authority or imposing prohibition or revoking the same**.—

(1) No authority to adopt, and no prohibition of adoption, shall be valid, unless given or imposed by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act, 1925 (XXXIX of 1925).

(2) Any authority or prohibition so given or imposed may be revoked either by an instrument registered, or a will executed, as aforesaid.

(3) If the authority or prohibition is given or imposed by a will, it may also be revoked in any of the other modes provided in section 70 of the Indian Succession Act, 1925 (XXXIX of 1925), as modified by Schedule III to that Act.

**8. Right to adopt as between two or more widows.**—Where a Hindu has left two or more widows with capacity to take a son in adoption to him, the right to adopt is determined as between them in accordance with the following provisions :—

(a) If he has granted to all or any of them authority to adopt, indicating the order of preference in that behalf, the right to adopt shall follow that order.

(b) If he has given no such indication, the right to adopt shall follow the order of the seniority of the widows to whom authority has been granted, as determined by section 9.

(c) If he has neither authorised nor prohibited an adoption, the right to adopt shall follow the order of the seniority of the widows as determined by section 9.

(d) A widow having the right to adopt under clause (b) or clause (c) may renounce it in favour of the next senior widow by a registered instrument ; if she does not so renounce it and if, without just cause, she either refuses, or fails within a reasonable time, to exercise her right when called upon to do so by the next senior or any other widow, the right shall pass to the next senior widow, and so on down to the last widow in the order of seniority.

**9. Seniority among wives and widows.**—For the purposes of this Division, seniority among the wives or widows of a person is determined by the order in which they were married to him, the woman who was married earlier being reckoned senior to the woman who was married later.

**10. Widow's right to adopt not exhausted by previous exercise.**—A widow may subject to the provisions of this Division, adopt several sons in succession, one after the death of another, unless the authority, if any, conferred upon her by her husband otherwise provides.

**11. Termination of widow's right.**—(1) A widow's right to adopt terminates—

(a) when she remarries, or

(b) when any Hindu son of her husband dies, leaving him surviving a Hindu son, widow or son's widow.

*Explanation.*—In this sub-section, son means a son, son's son, or son's son's son, whether by legitimate blood relationship or by adoption.

(2) Once terminated, the widow's right to adopt can never revive.

**12. Capacity to give in adoption.**—(1) The only persons having the capacity to give a boy in adoption are his father and his mother.

(2) The primary right is that of the father, but he shall not exercise it without the consent of the mother where she is capable of consent.

(3) The mother may give the boy in adoption—

(a) if the father is dead,

(b) if he has completely and finally renounced the world in any of the modes set forth in sub-section (1) of section 11 of Part II, or

(c) if he is incapable of consent :

Provided that the father has not prohibited her from doing so by an instrument registered under the Indian Registration Act, 1908 (XVI of 1908), or by a will executed in accordance with the provisions of section 63 of the Indian Succession Act, 1925 (XXXIX of 1925).

(4) The father or mother giving a boy in adoption must be of sound mind and must have completed the age of eighteen years.

**13. Capacity to be taken in adoption.**—For a boy to be capable of being taken in adoption, he must satisfy the following conditions :—

- (i) He must be a Hindu.
- (ii) He must never have been married.
- (iii) Unless he belongs to the same *gotra* as the adoptive father, his *upanayana* ceremony must not have been performed.
- (iv) He must not have completed the age of fifteen years.
- (v) He must not have been already adopted.

**14. Certain persons declared capable of being adopted.**—For the avoidance of doubt, it is hereby declared that the adoption of the following persons is permissible :—

- (i) The eldest or the only son of his father ;
- (ii) The son of a woman whom the adoptive father could not have legally married, and in particular, his daughter's son, sister's son, or mother's sister's son ;
- (iii) A stranger, although near relatives of the adoptive father exist.

**15. Actual giving and taking essential but not datta homam.**—(1) It is essential to a valid adoption that the boy to be adopted is actually given and taken in adoption by the parents concerned or under their authority, with intent to transfer him from the family of his birth to the family of his adoption.

(2) The performance of the *datta homam* is not essential to the validity of an adoption.

**16. Conditions to be complied with.**—In every adoption, the following conditions must be complied with :—

(i) The adoptive father by or to whom the adoption is made must have no Hindu son, son's son, or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

*Explanation.*—A person not actually born at the time of adoption, although he may then be in the womb and is subsequently born alive, is not said to be living at the time of adoption for the purposes of this clause.

(ii) Where a person has directed that his widow shall adopt only with the consent of a specified person, or within a specified period, or upon some other specified condition, and not otherwise, the adoption must be made by her strictly in accordance with such direction.

*Explanation.*—In each case, it is for the Court to determine whether the husband intended to authorise the adoption only in accordance with the direction given by him or not.

(iii) The same boy may not be adopted simultaneously by or to two or more fathers nor may two or more boys be simultaneously adopted by or to the same father.

(iv) (a) Every adoption must be made with the free consent of the person giving and of the person taking in adoption.

(b) Where the consent of either is obtained by coercion, undue influence, fraud, misrepresentation or mistake, the consent is not free within the meaning of sub-clause (a), but the person whose consent is so obtained may confirm the adoption after the coercion or undue influence has ceased, or after discovering the fraud, misrepresentation or mistake, as the case may be, provided that the confirmation does not prejudice the rights of other persons.

**17. Adoption in contravention of Division to be void.**—Except in the case referred to in section 16 (iv) (b), an adoption made in contravention of the provisions of this Division shall be void; it creates no rights in the adoptive family, and destroys none in the family of birth.

**18. Effects of adoption.**—An adopted son is deemed to be a son in his adoptive father's family with effect from the date of the adoption, all his ties in the family of his birth being severed and replaced by those created by the adoption :

Provided that—

(a) any property which vested in him before the adoption shall continue to vest in him subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his birth ;

(b) he cannot marry any person whom he could not have married if he had continued in the family of his birth.

**19. Divesting of estates by adoption.**—(1) If an adoption is made within three years of the death of the adoptive father, the adopted son shall be entitled to all the rights to which a son born of the adoptive father would have been entitled in such father's estate as it stood at the time of his death, except that the adopted son shall not be entitled to any mesne profits in respect of the period before the adoption.

(2) If an adoption is made to any person within three years of the death of his son, son's son, or son's son's son, as the case may be, the adopted son shall be entitled to all the rights to which a son born of the adoptive father and in existence on the date of such death, would have been entitled in the estate of such son, son's son, or son's son's son as it stood on that date, except that the adopted son shall not be entitled to any mesne profits in respect of the period before the adoption.

(3) In cases other than those referred to in sub-section (1), the adopted son takes, irrespective of the time of his adoption—

(a) one-half of whatever estate or estates his adoptive mother inherited from her husband or from her son, son's son, or son's son's son, as the estate or estates stood immediately before the adoption ; and

(b) if the estate or any of the estates so inherited by her is impartible, the whole of such estate as it stood immediately before the adoption.

(4) The provisions of sub-sections (1) to (3) shall also apply in respect of agricultural land, wherever situate in British India.

(5) Save as provided in this section, an adoption does not divest any person of any estate which vested in him or her before the adoption.

**20. Certain agreements to be void.**—An agreement not to adopt, or curtailing the rights of an adopted son, is void.

**21. Right of adoptive parents to dispose of their properties.**—(1) Where a boy is given in adoption under an express agreement which has been registered under the Indian Registration Act, 1908 (XVI of 1908), that the adoptive father or mother or both shall not dispose of his or her or their properties, or any specified portion thereof, to the prejudice of the adopted son, any such disposal shall be void.

(2) Save as provided in sub-section (1), an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will.

**22. The adoptive mother, if any, in case of adoption by a male.**—(1) Where a Hindu who has a wife living adopts a son, she shall be deemed to be the adoptive mother.

(2) Where a Hindu has more than one wife living, that wife in association with whom or with whose consent he makes the adoption, or if more than one wife ha



been so associated or has so consented, the seniormost among the wives so associated or consenting, as the case may be, shall be deemed to be the adoptive mother, and the other wives the step-mothers, of the adoptee.

(3) Where a widower adopts within one year of his wife's death, she shall be deemed to be the adoptive mother, and any other pre-deceased wife or any wife subsequently married by him shall be deemed to be the step-mother, of the adoptee.

Where more than one wife has died within a period of one year preceding the adoption, that one of such wives who died last, shall be deemed to be the adoptive mother, unless the adopter has directed or given a clear indication that some other of such wives shall be deemed to be the adoptive mother; in either case, any pre-deceased wife who is not the adoptive mother and any wife subsequently married by the adopter shall be deemed to be the step-mothers of the adoptee.

(4) Where a bachelor adopts, any wife subsequently married by him shall be deemed to be the stepmother of the adoptee, and not his adoptive mother.

**23. The adoptive mother in case of adoption by widow.**—(1) Where one of several widows of a deceased Hindu makes an adoption, she shall be deemed to be the adoptive mother, and the other widows the step-mothers, of the adoptee.

(2) Where two or more widows jointly make an adoption, the seniormost among the widows shall be deemed to be the adoptive mother, and the other widow or widows the step-mother or step-mothers, of the adoptee.

**24. Valid adoption not to be cancelled.**—An adoption once it has been validly made cannot be cancelled by the adoptive father or mother or any other person nor can the adopted son renounce his status as such and return to the family of his birth.

**25. Applicability of provisions in this Division to certain cases.**—(1) Nothing in this Division shall affect any adoption made before the commencement of this Code; and the validity and effect of any such adoption shall be determined as if this Code were not in force.

(2) This Division shall however apply to any adoption made after the commencement of this Code to a male Hindu who died before such commencement, subject to the following modifications:—

(a) If the adoption fulfils the requirements of a valid adoption under the law applicable to the case before the commencement of this Code, and the adopted son would, under that law, divest the estate of any person other than the adopting widow or acquire any interest in any property, he shall, with effect from the date of the adoption, divest such person of such estate or acquire an interest in such property, as the case may be, and sub-sections (1) and (2) of section 19 shall apply accordingly.

(b) The adopted son shall also have the right to impeach any transfer of property comprised in any estate inherited by his adoptive mother or any of her co-widows from his adoptive father or from his son, son's son or son's son's son, so far as such transfer was not valid.

## DIVISION II.—ADOPTION IN KRITRIMA OR GODHA FORM

**26. Kritrima and Godha adoptions.**—(1) A person may be adopted in the *kritrima* or *godha* form by any male or female Hindu who has attained the age of eighteen years, if the custom by which the parties would have been governed, if this Code had not come into force, permits of an adoption in such form.

(2) The adoption shall be made in accordance with the custom, and its incidents shall also be regulated thereby.

## DIVISION III.—PROHIBITION OF OTHER FORMS OF ADOPTION

**27. Prohibition of adoption in other forms.**—No one shall be adopted by or to any Hindu in any form other than the *dattaka*, the *kritrima* or the *godha* or otherwise than in accordance with the provisions of Division I or Division II, as the case may be.

## DIVISION IV.—SAVING

28. **Saving.**—Nothing in this Chapter applies to a Hindu governed by the Marumakkattayam or Aliyasantana Law of Inheritance.

## CHAPTER II.—REGISTRATION OF ADOPTIONS

29. **Definition of “prescribed”.**—In this Chapter, “prescribed” means prescribed by rules made under section 35.

30. **Application for registration of adoption.**—Any person who has made an adoption in the *dattaka*, the *kritrima* or the *godha* form may, if he or she so desires, apply for an order directing the registration of the adoption under this Chapter, to the District Court having jurisdiction in the place where the adoption was made.

31. **Application when to be made and particulars to be contained in it.**—The application shall be made within ninety days of the adoption, and shall state the following particulars and such others as may be prescribed :—

- (i) The date of the adoption.
  - (ii) The form of the adoption, that is, whether it was in the *dattaka*, the *kritrima*, or the *godha* form.
  - (iii) The name or names, and the age or ages, of the person or persons taking in adoption.
  - (iv) If the adopter is a married man, the name of his wife ; and if he is a widower, the name of his pre-deceased wife.
- If there are two or more wives or pre-deceased wives, their names, the order in which, and the dates on which, they were married to him, and the name of the wife or pre-deceased wife who is the adoptive mother, if any.
- (v) If the adopter is a woman, the name of her husband and the names of her co-wives or co-widows, if any.
  - (vi) The name and age of the person, if any, giving in adoption.
  - (vii) The name of the adopted boy in the family of his birth.
  - (viii) The age of the adopted boy.
  - (ix) The name of the adopted boy in the family of his adoption.

32. **Notice of application to be published.**—(1) The Court shall publish a general notice of the application, and also serve a special notice thereof on the person, if any, who is alleged to have given the boy in adoption as well as on the person or persons who, if the adoption had not taken place, would be entitled, under the provisions of Part II, to inherit the estate of the adoptive father, if he or his widow, as the case may be, were dead.

(2) In the notices aforesaid, a period of not less than thirty days from the date of the publication or service thereof shall be allowed for objections.

33. **Registration of adoption.**—After hearing the objections, if any, received within the period so allowed, the Court, upon being satisfied of the fact of the adoption, shall direct the Registrar of Births and Deaths for the local area where the adoption took place, to cause an entry of the adoption to be made in a prescribed register, to be called the Register of Adopted Children.

34. **Certified copy of entry in Register to be evidence of adoption.**—A copy of any entry in the Register of Adopted Children, certified in the prescribed manner, shall, without further proof, be received as evidence of the fact of adoption in any Court of Law.

35. **Rules.**—The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter ; and in particular, such rules may provide for the levy of any fees in connection therewith.

**FIRST SCHEDULE**  
(See section 6 of Part I)

Year 1	No. 2	Short title 3	Amendment 4
1872	III	The Special Marriage Act, 1872.	<p>1. In the preamble, the words "and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion" shall be omitted.</p> <p>2. In section 2, the words "or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion" shall be omitted.</p> <p>3. Sections 23 and 24, except in so far as they affect succession to agricultural land in Governor's Provinces, and the whole of sections 25 and 26, shall stand repealed.</p>

**SECOND SCHEDULE**  
(See section 7 of Part I)

Year 1	No. 2	Short title 3	Extent of repeal 4
1928	XII	The Hindu Inheritance (Removal of Disabilities) Act, 1928.	The whole, except in so far as it affects succession to agricultural land in Governors' Provinces.
1929	II	The Hindu Law of Inheritance (Amendment) Act, 1929.	The whole, except in so far as it affects succession to agricultural land in Governors' Provinces.
1937	XVIII	The Hindu Women's Rights to Property Act, 1937.	The whole.
1946	XIX	The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.	The whole.
1946	XXVIII	The Hindu Marriage Disabilities Removal Act, 1946.	The whole.

**THIRD SCHEDULE**  
(See section 9 of Part IV)  
**NOTICE OF MARRIAGE**

To \_\_\_\_\_ a Registrar of Hindu Civil  
Marriages under Part IV of the Hindu Code for the \_\_\_\_\_ District.

We hereby give you notice that a civil marriage under Part IV of the Hindu Code is intended to be contracted between us within three calendar months from the date hereof.

Names	Condition	Rank or Profession	Age	Dwelling place	Length of residence
A B	Unmarried Widower	Landowner	..	...	...
C D	Spinster Widow	...	...	...	...

Witness our hands, this

day of

19  
(Signed) A B  
C D

## FOURTH SCHEDULE

(See section 14 of Part IV)

## DECLARATION TO BE MADE BY THE BRIDEGROOM

I, A B, hereby declare as follows :—

1. I am at the present time unmarried (or a widower, as the case may be).
2. I profess the Hindu religion (or the Buddhist, the Sikh or the Jaina religion, as the case may be).
3. I have completed ..... years of age.
4. I am not related to C D (the bride) within the degrees of relationship prohibited by Part IV of the Hindu Code.

*[And when the bridegroom has not completed the age of twenty-one years:]*

5. The consent of MN, my father (or guardian, as the case may be), has been given to a marriage between myself and C D, and has not been revoked.]

6. I am aware that, if any statement in this declaration is false, and if in making such statement, I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Signed) A B (the bridegroom).

## DECLARATION TO BE MADE BY THE BRIDE

I, C D, hereby declare as follows :—

1. I am at the present time unmarried (or a widow, as the case may be).
2. I profess the Hindu religion (or the Buddhist, the Sikh or the Jaina religion, as the case may be).
3. I have completed ..... years of age.
4. I am not related to A B (the bridegroom) within the degrees of relationship prohibited by Part IV of the Hindu Code.

*[And when the bride has not completed the age of twenty-one years unless she is a widow:]*

5. The consent of O P, my father (or guardian, as the case may be) has been given to a marriage between myself and A B, and has not been revoked.]

6. I am aware that, if any statement in this declaration is false, and if in making such statement, I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Signed) C D (the bride).

Signed in our presence by the above-named A B and C D :

G	H	}	(three witnesses).
I	J		
K	L		

*[And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow:]*

Signed in my presence and with my consent by the above-named A B and C D :

M N (O P) the father (or guardian) of the above-named A B (or C D, as the case may be).]

(Countersigned) E F,

Registrar of Hindu Civil Marriages under  
Part IV of the Hindu Code for the District  
of

Dated this

day of

19

**FIFTH SCHEDULE**  
(See section 17 of Part IV)  
**REGISTRAR'S CERTIFICATE**

I, E F, certify that, on the \_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_, A B and C D appeared before me and that each of them, in my presence and in the presence of three credible witnesses who have signed hereunder, made the declarations required by Part IV of the Hindu Code and that a marriage under the said Part was contracted between them in my presence.

(Signed) E F,

Registrar of Hindu Civil Marriages under  
Part IV of the Hindu Code for the District  
of \_\_\_\_\_

(Signed) A B

C D

G H

I J

K L

} (three witnesses).

Dated this \_\_\_\_\_

Day of \_\_\_\_\_

, 19 \_\_\_\_.

**SIXTH SCHEDULE**  
(See section 18 of Part IV)  
**REGISTRAR'S CERTIFICATE**

I, E F, certify that A B and C D appeared before me this day and that each of them, in my presence and in the presence of three credible witnesses who have signed hereunder, declared that a sacramental marriage was solemnized between them in a Hindu form on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and expressed their desire to have such marriage registered as a civil marriage, and that in accordance with their desire, the said marriage has, this day, been registered under section 18 of Part IV of the Hindu Code as a civil marriage, having effect as such from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the date on which an application was made for the registration of their marriage as a civil marriage under section 18 aforesaid.

The following children born to them after the solemnization of their marriage in the Hindu form as aforesaid shall be deemed to be, and always to have been, legitimate.

Here enter the names of the children, in the order of their dates of birth, specifying against each child the date of his or her birth.

(Signed) E F,

Registrar of Hindu Civil Marriages under  
Part IV of the Hindu Code of the District  
of \_\_\_\_\_

(Signed) A B

C D

G H

I J

K L

} (three witnesses).

**STATEMENT OF OBJECTS AND REASONS**

For sometime past there have been attempts to promote and pass piecemeal legislations on different topics of Hindu Law both in the Central and in the Provincial Legislatures. There was a growing public opinion in the country in favour of a consolidated and uniform code dealing with the different topics of Hindu Law for all the Provinces and for all sections of the Hindu society. No thoughtful observer of the present conditions and trends in Hindu society can fail to be impressed by the great need there is to alter the law so as make it fit the new pattern to which Hindu society seems to be rapidly adjusting itself. With this end in view the Central Government by their Resolution dated 20th January, 1944 appointed the Hindu Law Committee for the purpose of formulating a code of Hindu Law which should be complete as far as possible. This Bill reproduces the draft Hindu Code prepared by the Hindu Law Committee. In drafting the Code the Hindu Law Committee held prolonged deliberations in the course of which public opinion was extensively consulted.

The Bill aims at providing uniformity in all branches of Hindu Law for all Provinces and for all sections. The old complex, intricate and different provisions of Hindu Law have also been simplified. Most of the provisions in the Bill are of a permissive or enabling character and impose no sort of compulsion or obligation whatever on the orthodox section of the community. Their only effect is to give a growing body of Hindus, men and women, the liberty to lead the lives which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways.

NEW DELHI ;

J. N. MANDAL.

*The 7th April, 1947*

The following Bill\* was introduced in the Legislative Assembly on the 12th April, 1947:—

L. A. BILL No. 48 of 1947

*1 Bill to regulate the profession of dentistry*

WHEREAS it is expedient to make provision for the regulation of the profession of dentistry and for that purpose to constitute Dental Councils ;

It is hereby enacted as follows :—

CHAPTER I

INTRODUCTORY

1. **Short title and extent.**—(1) This Act may be called the Dentists Act, 1947.

(2) It extends to the whole of British India.

2. **Interpretation.**—In this Act, unless there is anything repugnant in the subject or context,—

(a) “ the Council ” means the Dental Council of India constituted under section 3 ;

(b) “ dental hygienist ” means a person not being a dentist or a medical practitioner, who scales, cleans or polishes teeth, carries out simple extractions or gives instruction in dental hygiene ;

(c) “ dental mechanic ” means a person who makes or repairs dentures and dental appliances ;

(d) “ dentistry ” includes—

(i) the performance of any operation on, and the treatment of any disease, deficiency or lesion of, human teeth or jaws, and the performance of radiographic work in connection with human teeth or jaws or the oral cavity ;

(ii) the giving of any anæsthetic in connection with any such operation or treatment ;

(iii) the mechanical construction or the renewal of artificial dentures or restorative dental appliances ;

(iv) the performance of any operation on, or the giving of any treatment, advice or attendance to, any person preparatory to, or for the purpose of, or in connection with, the fitting, inserting, fixing, constructing, repairing or renewing of artificial dentures or restorative dental appliances, and the performance of any such operation and the giving of any such treatment, advice or attendance, as is usually performed or given by dentists ;

---

\*The Governor General has been pleased to give the previous sanction required by sub-section (1) of section 119 of the Government of India Act 1925, to the introduction in the Legislative Assembly of this Bill.

(e) "medical practitioner" means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916), or in the Schedules to the Indian Medical Council Act, 1933 (XXVII of 1933), or in the Province of Bombay, by an authority authorised to hold a qualifying examination under the Bombay Medical Practitioners' Act, 1938 (Bom. Act XXVI of 1938);

(f) "prescribed" means prescribed by rules or regulations made under this Act;

(g) "Provincial Council" means a Provincial Dental Council constituted under section 21, and includes a Joint Provincial Council constituted in accordance with an agreement under section 22;

(h) "register" means a register maintained under this Act;

(i) "recognised dental qualification" means any qualification for the time being included in the Schedule or recognised by the Council under this Act;

(j) "registered dentist", "registered dental hygienist" and "registered dental mechanic" shall mean, respectively, a person whose name is for the time being registered in a register of dentists, a register of dental hygienists and a register of dental mechanics.

## CHAPTER II

### DENTAL COUNCIL OF INDIA

**3. Constitution and composition of Council.**—The Central Government shall, as soon as may be, constitute a Council consisting of the following members, namely :—

(a) one registered dentist possessing a recognised dental qualification from each Governor's Province elected by the registered dentists of that Province;

(b) one member elected by the Medical Council of India;

(c) four heads of dental colleges in British India which grant recognised dental qualifications, elected by such colleges;

(d) two members elected by the authority known as the Inter-University Board;

(e) four members nominated by the Central Government, of whom one shall be a registered dentist possessing a recognised dental qualification and practising, or holding an appointment in an institution for the training of dentists, in a Chief Commissioner's Province.

**4. Incorporation of Council.**—The Council constituted under section 3 shall be a body corporate by the name of the Dental Council of India, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and shall by the said name sue and be sued.

**5. Mode of elections.**—Elections under this Chapter shall be conducted in the prescribed manner, and where any dispute arises regarding any such election, it shall be referred to the Central Government whose decision shall be final.

**6. Tenure of office and casual vacancies.**—(1) Subject to the provisions of this section, an elected or nominated member shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer.

(2) An elected or nominated member may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall thereupon become vacant.

(3) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Council, from three consecutive ordinary meetings of the Council or, in the case of a member whose name is required to be included in a Provincial register, if his name is removed from such register, or if he has been elected under clause (c) of section 3, if he ceases to hold his appointment as head of a college.

(4) A casual vacancy in the Council shall be filled by fresh election or nomination, as the case may be, and the person elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

(5) Members of the Council shall be eligible for re-election or re-nomination.

(6) No act done by the Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Council.

**7. President and Vice-President of Council.**—(1) The President and Vice-President of the Council shall be elected by the members thereof from among themselves :

Provided that on the first constitution of the Council and until the President is elected, a member of the Council nominated by the Central Government in this behalf shall discharge the function of the President:

Provided further that for five years from the first constitution of the Council, the President shall, if the Central Government so decides, be a person nominated by the Central Government who shall hold office at the pleasure of the Central Government, and where he is not already a member, shall be a member of the Council in addition to the members referred to in section 3.

(2) An elected President or Vice-President shall hold office as such for a term not exceeding five years and not extending beyond the expiry of his term as member of the Council, but subject to his being a member of the Council, he shall be eligible for re-election.

**8. Staff, remuneration and allowances.**—The Council shall—

(a) appoint a Secretary, who may also if deemed expedient, act as Treasurer ;

(b) appoint such other officers and servants as the Council deems necessary to enable it to carry out its functions under this Act ;

(c) require and take from the Secretary or from any other officer or servant such security for the due performance of his duties as the Council considers necessary ;

(d) with the previous sanction of the Central Government, fix the fees and allowances of the President, Vice-President and members of the Council, and the pay and allowances and other conditions of service of officers and servants of the Council.

**9. The Executive Committee.**—(1) The Council shall constitute from among its members an Executive Committee and may so constitute other Committees for such general or special purposes as the Council considers necessary for carrying out its functions under this Act.

(2) The Executive Committee shall consist of the President and Vice-President *ex officio*, and five other members elected by the Council by single transferable vote.

(3) The President and Vice-President of the Council shall be chairman and vice-chairman, respectively, of the Executive Committee.

(4) A member of the Executive Committee shall hold office as such until the expiry of his term of office as member of the Council, but subject to his being a member of the Council, he shall be eligible for re-election.

(5) In addition to the powers and duties conferred and imposed on it by this Act, the Executive Committee shall exercise and discharge such powers and duties as may be prescribed.

**10. Recognition of qualifications.**—(1) For the purposes of this Act the qualifications included in Part I of the Schedule shall be recognised dental qualifications.

(2) Any authority in British India which grants a qualification in dentistry not included in Part I of the Schedule may apply to the Council to have such qualification recognised, and the Council may, after such inquiry, if any, as it thinks fit, and after consulting the Government of the Province in which the authority making the application is situated, declare that



such qualification, or such qualification only when granted after a specified date, shall be a recognised dental qualification

(3) The qualifications included in Part II of the Schedule shall be recognised dental qualifications but shall not entitle persons other than British subjects of Indian domicile to registration except on the first preparation of the register under this Act, unless they have been declared to be recognised dental qualifications in accordance with the provisions of sub-section (5).

(4) The qualifications included in Part III of the Schedule shall be recognised dental qualifications only for the purpose of the registration of British subjects of Indian domicile when the register is first prepared under this Act.

(5) The Council may enter into negotiations with any authority in any State or country outside British India which by the law of such State or country is entrusted with the maintenance of a register of dentists, for the settling of a scheme of reciprocity for the recognition of qualifications, and in pursuance of any such scheme the Council may declare that a qualification granted by any authority in any State or country outside India, or such qualification only when granted after a specified date, shall be a recognised dental qualification for the purposes of this Act :

Provided that no declaration shall be made under this sub-section in respect of any qualification unless by the law and practice of the State or country in which the qualification is granted, persons of British Indian origin holding dental qualifications registrable in that State or country are permitted to enter and practise the profession of dentistry in that State or country.

**11. Qualifications of dental hygienists.**—Any authority in British India which grants a qualification for dental hygienists may apply to the Council to have such qualification recognised, and the Council may, after such inquiry, if any, as it thinks fit, and after consulting the Government of the Province in which the authority making the application is situated, declare that such qualification, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act.

**12. Qualifications of dental mechanics.**—The Council may prescribe the period and nature of an apprenticeship or training which shall be undergone and the other conditions which shall be satisfied by a person before he is entitled to be registered under this Act as a dental mechanic.

**13. Effect of recognition.**—Notwithstanding anything contained in any other law,—

(a) any recognised qualification shall be a sufficient qualification for enrolment in the appropriate register of any Province,

(b) no person shall after the first registers are compiled under this Act, be entitled to be enrolled in any register as a dentist or dental hygienist unless he holds a recognised qualification, or as a dental mechanic unless he has undergone training which satisfies the prescribed requirements referred to in section 12.

**14. Power to require information as to courses of study and training and examinations.**—Every authority in British India which grants any recognised qualification shall furnish such information as the Council may from time to time require as to the courses of study and training and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses or study and examinations are required to be undergone, and generally as to the requisites for obtaining such qualification.

**15. Inspections.**—(1) The Executive Committee may appoint such number of inspectors as it deems necessary to attend any examinations held by authorities

in British India which grant recognised qualifications and to inspect any institution recognised as a training institution.

(2) Inspectors appointed under this section shall not interfere with the course of any examination but they shall report to the Executive Committee on the sufficiency of every examination which they attend and of the courses of study and training at every institution which they inspect, and on any other matters with regard to which the Executive Committee may require them to report.

(3) The Executive Committee shall forward a copy of such report to the authority or institution concerned and shall also forward copies with remarks, if any, of the authority or institution concerned thereon to the Central Government and to the Government of the Province in which the authority or institution is situated.

**16. Withdrawal of recognition.**—(1) When upon report by the Executive Committee it appears to the Council—

(a) that the courses of study and training or the examinations to be undergone in order to obtain a recognised qualification from any authority in British India, or the conditions for admission to such courses or the standards of proficiency required from the candidates at such examinations are not in conformity with regulations made under this Act or fall short of the standards required thereby, or

(b) that an institution does not satisfy the requirements of the Council,

the Council may send to the Government of the Province in which the authority or institution is situated a statement to such effect, and the Provincial Government shall forward it, along with such remarks as it may think fit, to the authority or institution concerned with an intimation of the period within which the authority or institution may submit its explanation to the Provincial Government.

(2) On receipt of the explanation, or where no explanation is submitted within the period fixed, then on the expiry of the period, the Provincial Government shall, after consulting the Provincial Council, forward its recommendations and those of the Provincial Council, if any, to the Council.

(3) The Council, after considering the recommendations of the Provincial Government and the Provincial Council and after such further inquiry, if any, as it may think fit to make, may declare that the qualification granted by the authority or institution shall be a recognised qualification only when granted before a specified date.

(4) The Council may declare that any recognised qualification granted outside British India shall be a recognised qualification only if granted before a specified date.

**17. Mode of declarations.**—All declarations under section 10, section 11 or section 16 shall be made by a resolution passed at a meeting of the Council and shall forthwith be published in the official Gazette.

**18. The Indian Register.**—(1) The Council shall maintain a register of dentists to be known as the Indian Dentists Register and consisting of the entries in all the Provincial registers of dentists.

(2) Each Provincial Council shall supply to the Council twenty printed copies of the Provincial register as soon as may be after the 1st day of April of each year, and each registrar shall inform the Council without delay of all additions to and other amendments in the Provincial register.

**19. Information to be furnished.**—(1) The Council shall furnish copies of its minutes and of the minutes of the Executive Committee and an annual report of its activities together with an abstract of its accounts to the Central Government.

(2) The Central Government may publish in such manner as it thinks fit any report, copy or abstract furnished to it under this section.

**20. Power to make regulations.**—(1) The Council may make regulations consistent with this Act to carry out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) provide for the management of the property of the Council and the maintenance and audit of its accounts;

(b) prescribe the manner in which elections under this Chapter shall be conducted;

(c) provide for the summoning and holding of meetings of the Council and the Executive Committee, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum;

(d) prescribe the functions of the Executive Committee;

(e) prescribe the powers and duties of the President and Vice-President;

(f) prescribe the tenure of office and the powers and duties of the Secretary, Inspectors and other officers and servants of the Council;

(g) prescribe the standard curricula for the training of dentists and dental hygienists, and the conditions for admission to courses of such training;

(h) prescribe the standards of examinations and other requirements to be satisfied to secure for qualifications recognition under this Act;

(i) any other matter which is to be or may be prescribed under this Act

Provided that regulations under clauses (g) and (h) shall be made after consultation with Provincial Governments.

(3) To enable the Council to be first constituted, the Central Government may make regulations for the conduct of the elections to the Council, and any regulation so made may be altered or rescinded by the Council in exercise of its powers under this section.

### CHAPTER III

#### PROVINCIAL DENTAL COUNCILS

**21. Constitution and composition of Provincial Councils.**—Except where a Joint Provincial Council is constituted in accordance with an agreement made under section 22, the Provincial Government shall constitute a Provincial Council consisting of the following members, namely:—

(a) four members elected from among themselves by single transferable vote by dentists registered in Part A of the Provincial register;

(b) two members elected from among themselves by single transferable vote by dentists registered in Part B of the Provincial register;

(c) the heads of dental colleges in the Province which grant recognised dental qualifications *ex officio*;

(d) one member elected by the Medical Council (by whatever name called) of the Province;

(e) three members nominated by the Provincial Government;

Provided that in the Province of Bengal the Board established under the Bengal Dentists Act, 1939 (Bengal Act XII of 1939), shall be deemed to be the Provincial Council constituted under this Act.

**22. Inter-Provincial agreements.**—(1) Two or more Provincial Governments may enter into an agreement to be in force for such period and to be subject to renewal for such further periods, if any, as may be specified in the agreement, to provide—

(a) for the constitution of a Joint Provincial Council for all the participating Provinces, or

(b) for a Provincial Council of one Province to serve the needs of the other participating Provinces. \*

(2) In addition to such matters as are in this Act specified, an agreement under this section may—

(a) provide for the apportionment between the participating Provinces of the expenditure in connection with the Provincial Council or Joint Provincial Council ;

(b) determine which of the participating Provincial Governments shall exercise the several functions of the Provincial Government under this Act, and the references in this Act to the Provincial Government shall be construed accordingly ;

(c) provide for consultation between the participating Provincial Governments either generally or with reference to particular matters arising under this Act ;

(d) make such incidental and ancillary provisions, not inconsistent with this Act, as may be deemed necessary or expedient for giving effect to the agreement.

(3) An agreement under this section shall be published in the official Gazette of the participating Provinces.

**23. Composition of Joint Provincial Councils.**—A Joint Provincial Council shall consist of the following members, namely :—

(a) two members elected from among themselves by single transferable vote by dentists registered in Part A of the register of each of the participating Provinces ;

(b) one member elected from among themselves by single transferable vote by dentists registered in Part B of the register of each of the participating Provinces ;

(c) the heads of dental colleges in all the participating Provinces which grant recognised dental qualifications, *ex officio* ;

(d) one member elected by the Medical Council (by whatever name called) of each participating Province ;

(e) two members nominated by each participating Provincial Government.

**24. Incorporation of Provincial Councils.**—Every Provincial Council shall be a body corporate by such name as may be notified by the Provincial Government in the official Gazette or, in the case of a Joint Provincial Council, as may be determined in the agreement, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and shall by the said name sue and be sued.

**25. President and Vice-president of Provincial Council.**—(1) The President and Vice-President of the Provincial Council shall be elected by the members from among themselves, by a single election, the candidate securing the highest number of votes becoming President and the candidate securing the next highest number of votes becoming Vice-President.

(2) The President or Vice-President shall hold office as such for a term not exceeding five years and not extending beyond the expiry of his term as a member of the Provincial Council, but subject to his being a member of the Provincial Council, he shall be eligible for re-election.

**26. Mode of elections.**—Elections under this Chapter shall be conducted in the prescribed manner, and where any dispute arises regarding any such election, it shall be referred to the Provincial Government whose decision shall be final.

**27 Term of office and casual vacancies.**—Subject to the provisions of this section, an elected or nominated member shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer.

(2) An elected or nominated member may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall thereupon become vacant.

(3) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Provincial Council, from three consecutive ordinary meetings of the Provincial Council, or in the case of a member whose name is required to be included in the register, if his name is removed from the register.

(4) A casual vacancy in the Provincial Council shall be filled by fresh election or nomination, as the case may be, and the person elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

(5) Members of the Provincial Council shall be eligible for re-election or re-nomination.

(6) No act done by the Provincial Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Provincial Council.

**28. Staff, remuneration and allowances.**—The Provincial Council may, with the previous sanction of the Provincial Government,—

(a) appoint a Registrar, who shall also act as Secretary and if deemed expedient, Treasurer, of the Provincial Council;

(b) appoint such other officers and servants as may be required to enable the Provincial Council to carry out its functions under this Act;

(c) require and take from the Secretary or from any other officer or servant such security for the due performance of his duties as the Provincial Council considers necessary;

(d) fix the salaries and allowances and other conditions of service of the Secretary and other officers and servants of the Provincial Council;

(e) fix the rates and allowances payable to members of the Provincial Council.

**29. Executive Committee.**—(1) The Provincial Council shall constitute from among its members an Executive Committee consisting of the President and Vice-President *ex officio*, and such number of other members elected by the Provincial Council by single transferable vote as may be prescribed.

(2) The President and Vice-President of the Provincial Council shall be chairman and vice-chairman, respectively, of the Executive Committee.

(3) A member of the Executive Committee shall hold office as such until the expiry of his term of office as member of the Provincial Council, but subject to his being a member of the Provincial Council, he shall be eligible for re-election.

(4) The Executive Committee shall exercise and discharge such powers and duties as may be prescribed.

**30. Information to be furnished.**—(1) The Provincial Council shall furnish such reports, copies of its minutes and of the minutes of the Executive Committee, and abstracts of its accounts to the Provincial Government as the Provincial Government may from time to time require and shall forward copies of all material so furnished to the Provincial Government to the Council.

(2) The Provincial Government may publish in such manner as it thinks fit any report, copy or abstract furnished to it under this section.

## CHAPTER IV

### REGISTRATION

**31. Preparation and maintenance of register.**—(1) The Provincial Government shall as soon as may be cause to be prepared in the manner hereinafter provided a register of dentists for the Province.

(2) The Provincial Council shall upon its constitution assume the duty of maintaining the register in accordance with the provisions of this Act.

(3) The register of dentists shall be maintained in two Parts, A and B, persons possessing recognised dental qualifications being registered in Part A and persons not possessing such qualifications being registered in Part B.

(4) The register shall include the following particulars, namely :—

(a) the full name, nationality and residential address of the registered person ;

(b) the date of his first admission to the register ;

(c) his qualification for registration, and the date on which he obtained his degree or diploma in dentistry, if any, and the authority which conferred it ;

(d) his professional address ;

(e) such further particulars as may be prescribed.

**32. First preparation of register.**—(1) For the purpose of first preparing the register of dentists, the Provincial Government shall, by notification in the official Gazette, constitute a Registration Tribunal consisting of three persons and shall also appoint a Registrar who shall act as Secretary of the Tribunal.

(2) The Provincial Government shall, by the same or a like notification, appoint a date on or before which application for registration, which shall be accompanied by the prescribed fee, shall be made to the Registration Tribunal.

(3) The Registration Tribunal shall examine every application received on or before the appointed date, and if it is satisfied that the applicant is qualified for registration under section 33, shall direct the entry of the name of the applicant on the register.

(4) The register so prepared shall thereafter be published in such manner as the Provincial Government may direct, and any person aggrieved by a decision of the Registration Tribunal expressed or implied in the register as so published may, within thirty days from the date of such publication, appeal to an authority appointed by the Provincial Government in this behalf by notification in the official Gazette.

(5) The Registrar shall amend the register in accordance with the decisions of the authority appointed under sub-section (4) and shall thereupon issue to every person whose name is entered on the register a certificate of registration in the prescribed form.

(6) Upon the constitution of the Provincial Council, the register shall be given into its custody, and the Provincial Government may direct that all or any specified part of the application fees for registration in the first register shall be paid to the credit of the Provincial Council.

**33. Qualifications for entry on first preparation of register.**—(1) A person shall be entitled on payment of the prescribed fee to have his name entered on the register when it is first prepared, if he resides or carries on the profession of dentistry in the Province and if he—

(a) holds a recognised dental qualification, or

(b) does not hold such a qualification but, being a British subject of Indian domicile, has been engaged in practice as a dentist as his principal means of livelihood in British India for a period of not less than five years prior to the commencement of this Act :

Provided that a person shall be entitled to registration by virtue of a qualification specified in Part III of the Schedule only if he is a British subject of Indian domicile :

Provided further that for the purposes of the first preparation of the register of dentists under this Act in the Province of Bengal, a person shall be entitled to have his name entered in the appropriate Part of the register, if he is registered on the register of dental practitioners maintained under the Bengal Dentists Act, 1939 (Bengal Act XII of 1939), and no registration fee shall be payable by such person.

(2) A person of British Indian domicile shall be entitled on payment of the prescribed fee to temporary registration as a dentist for a period of five years, if he has been engaged in practice as a dentist as his principal means of livelihood in British India for a period of not less than two or more than five years before the date of the commencement of this Act, and a person so registered shall be entitled to permanent registration if within a period of five years after that date he passes an examination which satisfies the requirements of the Council.

**34. Qualification for subsequent registration.**—After the date appointed under sub-section (2) of section 32 a person shall, on payment of the prescribed fee, be entitled to have his name entered on the register of dentists, if he resides or carries on the profession of dentistry in the Province and if he—

(i) holds a recognised dental qualification, or

(ii) does not hold such a qualification but, being a British subject of Indian domicile, has been engaged in practice as a dentist as his principal means of livelihood in British India for a period of not less than two years before the commencement of this Act and has passed, within a period of five years after the commencement of this Act, an examination recognised for this purpose by the Council :

Provided that no person other than a British subject of Indian domicile shall, except when the register is first prepared under section 32, be entitled to registration by virtue of a qualification specified in Part II of the Schedule, unless the Council has in pursuance of a scheme of reciprocity declared that qualification to be a recognised qualification :

Provided further that a person registered in Part B of the register shall be entitled to be registered in Part A thereof, if within a period of five years he passes an examination recognised for the purpose by the Council.

**35. Scrutiny of applications for registration.**—(1) After the date appointed for the receipt of applications for registration in the first register of dentists, all applications for registration shall be addressed to the Registrar of the Provincial Council and shall be accompanied by the prescribed fee.

(2) If upon such application the Registrar is of opinion that the applicant is entitled to have his name entered on the register, he shall enter thereon the name of the applicant :

Provided that no person, whose name has under the provisions of this Act been removed from the register of any Province, shall be entitled to have his name entered on the register except with the approval of the Provincial Council recorded at a meeting.

(3) Any person whose application for registration is rejected by the Registrar may, within three months from the date of such rejection, appeal to the Provincial Council, and the decision of the Provincial Council thereon shall be final.

(4) Upon entry on the register of a name under this section, the Registrar shall issue a certificate of registration in the prescribed form.

**36. Registers of dental hygienists and dental mechanics.**—(1) The Provincial Government may by notification in the official Gazette direct that the Provincial Council shall maintain a register of dental hygienists or a register of dental mechanics.

(2) The provisions of section 35 shall, so far as they may be made applicable, apply in respect of applications for registration in a register referred to in this section.

**37. Qualification for registration as a dental hygienist.**—A person shall be entitled on payment of the prescribed fee to have his name registered on the register of dental hygienists, if he resides in the Province and holds a recognised qualification in dental hygiene.

**38. Qualification for registration as a dental mechanic.**—A person shall be entitled on payment of the prescribed fee to have his name entered in the register of dental mechanics, if he satisfies the prescribed requirements referred to in section 12 :

Provided that for the purposes of the preparation of the first register of dental mechanics a person shall be entitled to be registered, if he has been engaged as a dental mechanic as his principal means of livelihood for a period of not less than two years prior to the date fixed for the preparation of the register.

**39. Renewal fees.**—(1) The Provincial Government may, by notification in the official Gazette, direct that for the retention of a name on a register after the 31st day of December of the year following the year in which the name is first entered on the register, there shall be paid annually to the Provincial Council such renewal fee as may be prescribed in respect of each register, and where such direction has been made, such renewal fee shall be due to be paid before the 1st day of April of the year to which it relates.

(2) Where a renewal fee is not paid before the due date, the Registrar shall remove the name of the defaulter from the register.

Provided that a name so removed may be restored to the register on payment, at any time during the remaining nine months of the year, of double the renewal fee prescribed.

(3) On payment of the renewal fee, the Registrar shall in the prescribed manner endorse the certificate of registration accordingly.

(4) A person whose name is removed from the register under sub-section (2) and is not restored thereto under the proviso to that sub-section, shall not be entitled to be again registered except with the approval of the Provincial Council and on such conditions as to payment of fees as it may direct.

**40. Entry of additional qualifications.**—A registered dentist shall on payment of the prescribed fee be entitled to have entered on the register any further recognised qualification which he may obtain.

**41. Removal from register.**—(1) Subject to the provisions of this section, the Provincial Council may order that the name of any person shall be removed from any register where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it may think fit to make,—

(i) that his name has been entered on the register in error or on account of misrepresentation or suppression of a material fact, or

(ii) that he has been convicted of any such offence or has been guilty of any such misconduct as in the opinion of the Provincial Council renders him unfit to be registered.

(2) An order under sub-section (1) may direct that the person whose name is ordered to be removed from a register shall be ineligible for registration in the Province and this Act either permanently or for such period of years as may be specified.

(3) An order under sub-section (1) shall not take effect until the expiry of three months from the date thereof.



(4) A person aggrieved by an order under sub-section (1) may, within thirty days from the date thereof, appeal to the Provincial Government, and the order of the Provincial Government upon such appeal shall be final.

(5) A person whose name has been removed from the register under this section or under sub-section (2) of section 39 shall forthwith surrender his certificate of registration to the Registrar, and the name so removed shall be published in the official Gazette.

**42. Restoration to register.**—The Provincial Council may at any time, for reasons appearing to it sufficient, order that upon payment of the prescribed fee the name of a person removed from a register shall be restored thereto.

**43. Bar of jurisdiction.**—No order refusing to enter a name on a register or removing a name from a register shall be called in question otherwise than in the manner provided in this Act.

**44. Issue of duplicate certificates.**—Where it is shown to the satisfaction of the Registrar that a certificate of registration has been lost or destroyed, the Registrar may, on payment of the prescribed fee, issue a duplicate certificate in the prescribed form.

**45. Printing of registers.**—As soon as may be after the 1st day of April in each year, the Registrar shall cause to be printed copies of the registers as they stood on the said date and such copies shall be made available to persons applying therefor on payment of the prescribed charge, and shall be evidence that on the said date the persons whose names are entered therein were registered dentists, registered dental hygienists or registered dental mechanics, as the case may be.

**46. Effect of registration.**—(1) Any reference in any other law to a person recognised by law as a dentist shall be deemed to be a reference to a dentist registered under this Act.

(2) No certificate required by or under any other law from a dentist shall be valid unless the person signing it is registered as a dentist under this Act.

(3) After the expiry of two years from the commencement of this Act, a person who is not registered in Part A of the Provincial register of dentists shall not, except with the sanction of the Provincial Government, hold any appointment as dentist or dental surgeon in any dispensary, hospital or other institution in the Province which is supported wholly or partially from public or local funds :

Provided that the provisions of this sub-section shall not apply to any such person who is holding such an appointment at the commencement of this Act.

(4) After the expiry of two years from the publication of a register of dental hygienists in a Province, no person whose name is not entered in that register shall hold appointment as dental hygienist in any dispensary, hospital or other institution in the Province which is supported wholly or partially from public or local funds.

## CHAPTER V

### MISCELLANEOUS

**47. Penalty for falsely claiming to be registered.**—If any person whose name is not for the time being entered on a register of the Province falsely pretends that it is so entered, or uses in connection with his name or title any words or letters reasonably calculated to suggest that his name is so entered, he shall be punishable with fine which may extend to five hundred rupees on a first conviction or to one thousand rupees on any subsequent conviction :

Provided that it shall be a defence to show that the name of the accused is entered on a register of another Province and that at the time of the alleged offence under this section an application for registration in the Province had been made.

**48. Misuse of titles.**—If any person,—

(a) not being a person registered in Part A of a register of dentists, takes or uses the description of dental practitioner, dental surgeon or surgeon dentist, or

(b) not being a person registered in Part A or Part B of a register of dentists, takes or uses the description of dentist, or

(c) not being a person whose name is entered on a register of dental hygienists, takes or uses in a Province where such register has been published, the title of dental hygienist, or

(d) not being a person whose name is entered on a register of dental mechanics, takes or uses in a Province where such register has been published, the title of dental mechanic,

he shall be punishable with fine which may extend to five hundred rupees.

**49. Practice by unregistered persons.**—After the expiry of two years from the commencement of this Act, no person other than a registered dentist shall practice dentistry or indicate in any way that he is prepared to practice dentistry :

Provided that the provisions of this section shall not apply to—

(a) practice of dentistry by a registered medical practitioner ;

(b) the extraction of a tooth by any person when the case is urgent and no registered dentist is available, so however that the operation is performed without the use of any general or local anaesthetic ;

(c) the extraction of a tooth or the scaling, cleaning or polishing of teeth by a registered dental hygienist in the employ of any Government in British India or a local authority or a registered dentist, in the performance of his duties in such employ ;

(d) the performance of dental work or radiographic work in any hospital or dispensary maintained or supported from public or local funds ;

(e) the mechanical construction or renewal of dentures or dental appliances by a dental mechanic :

Provided further that in any area notified in this behalf by the Provincial Government in the official Gazette a registered dental hygienist, whether employed in the manner referred to in clause (c) or not, may extract a tooth or scale, clean or polish teeth.

**50. Failure to surrender certificate of registration.**—If any person whose name has been removed from a register fails without sufficient cause forthwith to surrender his certificate of registration, he shall be punishable with fine which may extend to fifty rupees.

**51. Companies not to engage in dentistry.**—(1) Except as hereinafter provided, the profession of dentistry shall not be carried on by a company or other corporate body.

(2) The provisions of sub-section (1) shall not apply to—

(a) a company or other corporate body which carries on no business other than the profession of dentistry or some business ancillary to the profession of dentistry and of which the majority of the directors and all the operating staff are registered dentists ;

(b) the carrying on of the profession of dentistry by employers who provide dental treatment for their employees otherwise than for profit ;

(c) the carrying on of the profession of dentistry by any hospital or dispensary or institution for the training of dentists or dental hygienists or by any local authority or other body authorised or required by law to provide dental treatment :

Provided further that any company or other corporate body carrying on the profession of dentistry at the date of the commencement of this Act may continue to do until the expiry of three years from such date.

(3) If any person contravenes the provisions of this section or section 49, he shall be punishable with fine which may extend, on first conviction to five hundred rupees, or on any subsequent conviction to one thousand rupees.

**52. Cognizance of offences.**—No Court shall take cognizance of any offence punishable under this Act except upon complaint made by order of the Provincial Government or the Provincial Council.

**53. Payment of part of fees to Council.**—The Provincial Council shall before the end of June in each year pay to the Council a sum equivalent to one-third (or such other proportion as may from time to time be agreed upon by the Council and the Provincial Government) of the total fees realised by the Provincial Council under this Act during the period of twelve months ending on the 31st day of March of that year.

**54. Appointment of commission of inquiry.**—If a Provincial Council fails to comply with any of the provisions of this Act, the Provincial Government may, if it thinks fit, appoint a commission of inquiry and may take such action as it may consider necessary to give effect to the recommendations of the Commission.

**55. Power to make rules.**—(1) The Provincial Government may, by notification in the official Gazette, make rules to carry out the purposes of Chapters III, IV and V.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the management of the property of the Provincial Council, and the maintenance and audit of its accounts ;

(b) the manner in which elections under Chapter III shall be conducted ;

(c) the summoning and holding of meetings of the Provincial Council, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to form a quorum ;

(d) the powers and duties of the President and Vice-President of the Provincial Council ;

(e) the constitution and functions of the Executive Committee, the summoning and holding of meetings thereof, the times and places at which such meetings shall be held, the number of members necessary to constitute a quorum ;

(f) the tenure of office and the powers and duties of the Registrar and other officers and servants of the Provincial Council, including the amount and nature of the security to be given by the Treasurer ;

(g) the particulars to be stated, and the proof of qualifications to be given in applications for registration under this Act ;

(h) the fees payable for [registration, and the charge for supplying copies of the registers ;

(i) the form of certificates of registration and the manner of endorsement or renewal thereof ;

(j) any other matter which is to be or may be prescribed under Chapters III, IV and V.

## THE SCHEDULE.

(See section 10)

## RECOGNISED DENTAL QUALIFICATIONS.

## PART I

Degrees or diplomas in dentistry issued by any of the following authorities :—

- (1) The Punjab University.
- (2) The Punjab State Medical Faculty, Lahore.
- (3) Board of Examiners, Calcutta Dental College and Hospital, if granted before the 1st day of January 1940.
- (4) State Medical Faculty, Bengal, Calcutta, if granted after the 31st day of December 1939.
- (5) The University of Bombay.
- (6) The College of Physicians and Surgeons, Bombay.
- (7) The Nair Hospital Dental Board, Bombay.
- (8) The Board of Examiners, College of Dentistry, Karachi, if granted before the 1st day of January 1942.

## PART II

A. Degrees or diplomas in dentistry issued by the following authorities :—

- (1) The Royal College of Surgeons, England.
- (2) The Royal College of Surgeons, Edinburgh.
- (3) The Royal Faculty of Physicians and Surgeons of Glasgow.
- (4) The Royal College of Surgeons, Ireland.
- (5) The Universities of Durham, London, Manchester, Birmingham, Liverpool, Leeds, Sheffield, Bristol, St. Andrews and Belfast, and the National University of Ireland.

B. Degrees or diplomas in dentistry issued by the following authorities :—

- (1) Atlanta Southern Dental College, Atlanta, Georgia.
- (2) College of Dentistry, University of Illinois, Chicago, Illinois.
- (3) College of Dental Surgery, Loyola University, Chicago, Illinois.
- (4) North-Western University Dental College, Chicago, Illinois.
- (5) School of Dentistry, Indiana University, Indianapolis, Indiana.
- (6) College of Dentistry, University of Iowa, Iowa City, Iowa.
- (7) Dental School, Harvard University, Boston, Massachusetts.
- (8) College of Dentistry, University of Nebraska, Omaha, Nebraska.
- (9) School of Dental and Oral Surgery, Columbia University, New York City N. Y.
- (10) University of Pennsylvania, Thomas Evans Dental Institute, School of Dentistry, Philadelphia, Pennsylvania.
- (11) Texas State Dental College, Houston, Texas.
- (12) University of Toronto, Faculty of Dentistry, Toronto, Ontario.
- (13) Dental College of McGill University, Montreal, Quebec.
- (14) Deutsche Zahnärztliche Universitätsinstitut, Bonn.
- (15) Deutsche Zahnärztliche Universitätsinstitut, Munich.
- (16) Ecole Dentaire de Paris, Paris.
- (17) Ecole Dentaire Française, Paris.

C. Any other foreign qualification approved in this behalf by the Dental Council of India, or before the said Council is constituted, by the Central Government, by notification in the official Gazette.

### PART III

The following qualifications :—

- (1) Post-graduate certificate of dentistry of the University of Vienna (Z.D.S.).
- (2) Any other foreign qualification approved in this behalf by the Central Government by notification in the official Gazette.

### STATEMENT OF OBJECTS AND REASONS

Except in Bengal, where there is a Provincial Dental Council established under a Provincial Act, there is no legal provision for the regulation of the education and training of dental practitioners or for the registration of qualified persons. There is also no restriction on the practice of dentistry by persons without scientific training. It is well known that the practice of dentistry by untrained or inadequately trained persons may constitute a danger to the patient. It is accordingly proposed to constitute an Indian Dental Council, which will be empowered to lay down minimum standards of training, and Provincial Councils, which will maintain registers of persons entitled to practise dentistry. The Indian Dental Council will also be authorised to enter into agreements with corresponding authorities in other countries for the reciprocal recognition of qualifications.

2. For the purposes of the preparation of the first register persons holding certain specified qualifications and persons who do not hold such qualifications but have practised dentistry for a minimum period of two years will be entitled to registration. Thereafter entry to the profession will be restricted to persons who have undergone a minimum standard of training.

3. As the Indian Dental Council will have the responsibility of laying down standards of education and training, only dentists who have undergone such training and possess recognised qualifications will be entitled to be elected to the Council.

4. In order that simple dental aid may be made available to the people on as wide a basis as possible, provision is made for the registration of dental hygienists who will be entitled to carry out simple extractions and perform minor dental work. Registered medical practitioners will be entitled to practise dentistry.

5. The existing Bengal Dental Council will perform the functions of a Provincial Dental Council under this Act and persons registered under the Bengal Dental Act will be entitled to registration without payment of registration fee.

6. In view of the provisions of section 119 of the Government of India Act, 1935, persons who are not British subjects of Indian domicile and who are resident in British India and hold specified dental qualifications, will be admitted to the first register but thereafter such persons will be entitled to registration only if their qualifications have been recognised by the Indian Dental Council in pursuance of a reciprocity agreement. The Indian Dental Council will be debarred from entering into a reciprocity agreement unless by the law and practice of the foreign country Indians are permitted to enter and practise dentistry in that country.

NEW DELHI ;  
The 5th April, 1947.

S. H. OULSNAM.

M. N. KAUL,  
Secy. to the Govt. of India.

